

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
TEMPO TELECOM, LLC)	WC Docket No. 09-197
(formerly filed under Birch Communications, Inc.))	
)	
Petition for Designation as an Eligible)	WC Docket No. 11-42
Telecommunications Carrier pursuant to)	
Section 214(e)(6) of the Communications Act)	
for Lifeline Support Only)	
<hr/>)	

**TEMPO TELECOM, LLC
FIFTH AMENDED PETITION FOR DESIGNATION
AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER
PURSUANT TO SECTION 214(e)(6) OF THE COMMUNICATIONS ACT
FOR LIFELINE SUPPORT ONLY**

Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8930 (telephone)
866-814-6582 (facsimile)
acollins@cahill.com

Dated: October 24, 2016

Its Attorneys

TABLE OF CONTENTS

	<u>Page</u>
I. OVERVIEW OF TEMPO.....	2
II. THE COMMISSION HAS JURISDICTION OVER TEMPO’S DESIGNATION REQUEST.....	5
III. TEMPO MEETS THE REQUIREMENTS FOR ETC DESIGNATION UNDER SECTION 214(e) OF THE ACT AND SECTION 54.201(d) OF THE COMMISSION’S RULES	5
A. Tempo Will Offer the Services Supported by Federal Universal Service throughout Its Designated Service Area	6
B. Tempo Will Provide Service Throughout Its Designated Service Area	7
C. Tempo Satisfies the Requirements for Conditional Forbearance from the Facilities Requirement.....	7
D. Tempo Will Advertise the Availability of the Supported Services and the Relevant Charges Using Media of General Distribution	9
IV. TEMPO MEETS THE ADDITIONAL REQUIREMENTS FOR ETC DESIGNATION UNDER SECTION 54.202 OF THE COMMISSION’S RULES	11
A. Tempo Will Comply with the Service Requirements Applicable to Lifeline Support.....	12
B. Tempo Will Remain Functional in Emergency Situations	12
C. Tempo Will Satisfy Applicable Consumer Protection and Service Quality Standards	13
D. Tempo Is Financially and Technically Capable of Providing Lifeline Services in Accordance with the Commission’s Rules	14
E. Tempo Will Provide Prepaid Wireless Lifeline Service Plans to Eligible Consumers.....	15
F. Designation of Tempo as a Lifeline-Only ETC Is in the Public Interest.....	17
V. TEMPO MEETS THE REQUIREMENTS FOR LIFELINE SERVICES UNDER SECTION 54.405 OF THE COMMISSION’S RULES	18

A.	Tempo Will Make Lifeline Service Available as Defined under the Commission’s Rules	18
B.	Tempo Will Publicize the Availability of Lifeline Service	19
C.	Tempo Will Include Certain Disclosures on Materials Describing Its Lifeline Service, Including the Name of the ETC	19
D.	Tempo Will Comply with the Commission’s De-Enrollment Procedures	20
VI.	ANTI-DRUG ABUSE CERTIFICATION	20
	CONCLUSION	21
EXHIBIT 1 - FCC-Approved Compliance Plan		
EXHIBIT 2 - State Commission Statements regarding Jurisdiction for Wireless ETC Designation		
EXHIBIT 3 - Designated Service Area		
EXHIBIT 4 - Examples of Marketing Material		
EXHIBIT 5 - Revised Certification and Enrollment Forms		

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
TEMPO TELECOM, LLC (formerly filed under Birch Communications, Inc.))	WC Docket No. 09-197
)	
Petition for Designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act for Lifeline Support Only)	WC Docket No. 11-42
)	
)	
)	

**TEMPO TELECOM, LLC
FIFTH AMENDED PETITION FOR DESIGNATION
AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER
PURSUANT TO SECTION 214(e)(6) OF THE COMMUNICATIONS ACT
FOR LIFELINE SUPPORT ONLY**

Tempo Telecom, LLC (“Tempo”), by its attorneys, respectfully submits this Fifth Amended Petition for designation as an eligible telecommunications carrier (“ETC”) pursuant to Section 214(e)¹ of the Communications Act of 1934, as amended (the “Act”), and Section 54.201² of the rules and regulations of the Federal Communications Commission (“Commission” or “FCC”).³ Tempo seeks ETC designation for Lifeline support only to provide prepaid wireless services in the states of Alabama, Connecticut, Delaware, District of Columbia, Florida, Maine, New Hampshire, New York, North Carolina, Tennessee, Texas, and Virginia (the “Designated Service Area”).⁴

¹ 47 U.S.C. § 214(e).

² 47 C.F.R. § 54.201.

³ See, e.g., *Lifeline and Link Up Reform and Modernization, et al.*, 27 FCC Rcd 6656 (2012) (“*Lifeline Reform Order*”).

⁴ More detail on Tempo’s Designated Service Area is set forth herein and in Exhibit 3.

I. BACKGROUND AND OVERVIEW OF TEMPO

This designation petition originally was filed by Birch Communications, Inc. (“Birch”) on April 27, 2012 covering the states of Alabama, Florida, North Carolina, and Tennessee,⁵ and was placed on public notice on July 11, 2012.⁶ On June 29, 2012, Birch filed a Compliance Plan with the Commission (attached as **Exhibit 1**),⁷ which was approved on August 8, 2012.⁸ Birch filed a second designation petition for the state of Texas on November 29, 2012.⁹ In both designation petitions and in the Compliance Plan, Birch noted that it was reviewing whether a separate legal entity should be established for the provision of its prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities.¹⁰

On December 18, 2012, Birch notified the Commission that the prepaid wireless Lifeline service would be provided by a separate legal entity known as Now Communications, LLC (“Now Comm”), and requested that ETC status be granted to Now Comm rather than Birch.¹¹ In

⁵ WC Docket Nos. 09-197, 11-42, Birch Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act for Lifeline Support Only and Compliance Plan (filed Apr. 27, 2012) (“Birch Multiple State Petition”).

⁶ WC Docket No. 09-197, *Wireline Competition Bureau Seeks Comment on Petitions for Designation as a Low-Income Eligible Telecommunications Carrier filed by Birch, Blue Jay, EZ Reach, Linkup Telecom, Tele Circuit Network, and You Talk Mobile*, Public Notice, DA 12-1116 (rel. July 11, 2012).

⁷ WC Docket Nos. 09-197, 11-42, Further Amended Compliance Plan of Birch Communications, Inc. (filed June 29, 2012) (“Compliance Plan”). Tempo will implement and comply with the Compliance Plan and hereby adopts the Compliance Plan as its own.

⁸ WC Docket Nos. 09-197 and 11-42, *Wireline Competition Bureau Approves the Compliance Plans of Birch Communications, Boomerang Wireless, IM Telecom, Q Link Wireless, and TAG Mobile*, 27 FCC Rcd 9184 (2012).

⁹ WC Docket Nos. 09-197, 11-42, Birch Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act for Lifeline Support Only in the State of Texas (filed Nov. 29, 2012) (“Birch Texas Petition”).

¹⁰ Birch Multiple State Petition at n.4; Birch Texas Petition at n.4; Compliance Plan at n.3.

¹¹ WC Docket Nos. 09-197, 11-42, Letter from Birch, to Marlene H. Dortch, FCC (filed Dec. 18, 2012) (notifying FCC of adoption of Compliance Plan); WC Docket Nos. 09-197, 11-42, Amendment to Petition for Designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act for Lifeline Support Only in the States of Alabama, Florida, North Carolina, and Tennessee (filed Dec. 18, 2012) (amending Birch Multiple State Petition); WC Docket Nos. 09-197, 11-42, Amendment to Petition for Designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act for Lifeline Support Only in the State of Texas (filed Dec. 18, 2012) (amending Birch Texas Petition).

that filing, Now Comm committed to implement and comply with the previously-approved Compliance Plan, and notified the FCC that Now Comm had adopted the Compliance Plan as its own. Now Comm also committed to utilize the same procedures and operations set forth in the Compliance Plan for its provision of prepaid wireless Lifeline service, offer the same prepaid wireless Lifeline service plan set forth in the Compliance Plan, and market and advertise its prepaid wireless Lifeline service in the same manner as described in the Compliance Plan. The FCC acknowledged these changes in corporate structure in a December 20, 2012 public notice, and confirmed that the previously-approved Compliance Plan would apply to Now Comm.¹²

Subsequent to the December 2012 filing, Now Comm changed its name to Tempo Telecom, LLC. Tempo notified the Commission that it adopted the FCC-approved Compliance Plan via letter dated September 17, 2013. The prepaid wireless Lifeline service at issue in this designation request will be provided by Tempo, and ETC status should be granted in Tempo's name only.

On May 13, 2013, Tempo filed a First Amended Petition to: (1) consolidate the two pending petitions; (2) update the Commission with respect to the corporate structure of the entity to be designated as an ETC and with additional Lifeline plans to be offered; and (3) provide additional information requested by Commission staff. On June 24, 2013, Tempo filed a Second Amended Petition to update its Designated Service Area as set forth in Exhibit 3 to include additional Study Area Codes ("SACs") that were inadvertently excluded from the First Amended Petition. On November 25, 2013, Tempo filed a Third Amended Petition to include the states of Connecticut, Delaware, District of Columbia, New Hampshire, New York, and Virginia in its

¹² *Wireline Competition Bureau Seeks Comment on Petitions for Designation as a Low-Income Eligible Telecommunications Carrier filed by Now Comm, Zing PCS, LTS, Odin Wireless, and TX Mobile*, 27 FCC Rcd 15937 (2012) ("The Wireline Competition Bureau has approved Birch's compliance plan, which will also apply to Now Comm.")

ETC designation request and to provide other updates regarding Tempo, its Lifeline service plans, and its ETC designation efforts. On January 2, 2014, Tempo filed a Fourth Amended Petition to include the state of Maine in its ETC designation request.

Tempo hereby files this Fifth Amended Petition to update its designation request based on changes to the FCC's rules and modifications to Tempo's practices and procedures that have been implemented over the last two years. To the extent not otherwise altered herein, all of the statements made in Tempo's approved Compliance Plan, the First Amended Petition, the Second Amended Petition, the Third Amended Petition, and the Fourth Amended Petition are incorporated by reference herein.

Tempo is registered with the Commission to provide domestic interstate telecommunications services, and holds authorization from the Commission for the provision of international telecommunications service. In addition to wireless Lifeline service, Tempo provides prepaid wireless voice and data services throughout the United States.

For the purposes of providing its prepaid wireless Lifeline and non-Lifeline services, Tempo resells the wireless services of Sprint and T-Mobile, which provide wholesale capacity to many wireless resellers. Both Sprint and T-Mobile provide Tempo with the network infrastructure and wireless transmission facilities needed for Tempo to offer wireless voice and data services as a Mobile Virtual Network Operator ("MVNO"), as they do for several other prepaid wireless providers that have received ETC designation. As it has been since its creation in 2012, Tempo continues to rely on Birch for all other facilities, network, back office, billing, and customer support functions necessary to provide both its Lifeline and non-Lifeline services.

To date, Tempo has received ETC designation in the states of Colorado, Georgia, Hawaii, Iowa, Indiana, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, North Dakota,

Nebraska, Nevada, Ohio, Rhode Island, South Carolina, Utah, Wisconsin, West Virginia and Wyoming. Tempo started providing Lifeline services in September 2013.

II. THE COMMISSION HAS JURISDICTION OVER TEMPO'S DESIGNATION REQUEST

Tempo certifies that each state for which Tempo seeks ETC designation from the Commission has asserted that it lacks jurisdiction over the wireless services that Tempo seeks to provide as a Lifeline-only ETC. Tempo therefore seeks ETC designation from the Commission pursuant to Section 214(e)(6).¹³ Attached as **Exhibit 2** to this Fifth Amended Petition are the relevant orders and/or examples of letters from the Alabama, Connecticut, Delaware, District of Columbia, Florida, Maine, New Hampshire, New York, North Carolina, Tennessee, Texas, and Virginia state commissions asserting to a lack of jurisdiction over ETC designation for wireless services.

III. TEMPO MEETS THE REQUIREMENTS FOR ETC DESIGNATION UNDER SECTION 214(e) OF THE ACT AND SECTION 54.201(d) OF THE COMMISSION'S RULES

Under Section 214(e)(1) of the Act and Section 54.201(d) of the Commission's rules, a common carrier¹⁴ may be designated as an ETC if it (1) offers the services supported by federal universal service as determined by the Commission, (2) offers such services using its own facilities or a combination of its own facilities and resale of another carrier's services; and (3) advertises the availability of such services and the relevant charges using media of general distribution.¹⁵ As set forth below, Tempo meets these requirements.

¹³ 47 U.S.C. § 214(e)(6).

¹⁴ Tempo will be a common carrier by virtue of its provision of wireless services. *See* 47 U.S.C. § 332(c)(1)(A) (an entity providing commercial mobile services is deemed to be a common carrier); *see also* 47 U.S.C. § 332(d)(1) (defining "commercial mobile service" to be any mobile service that is provided for profit and makes interconnected service available to the public).

¹⁵ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

A. Tempo Will Offer the Services Supported by Federal Universal Service throughout Its Designated Service Area

Pursuant to Section 54.101(a) of the Commission's current rules, carriers seeking ETC designation must provide voice telephony services.¹⁶ Specifically, eligible Lifeline telephony services must provide voice grade access to the public switched telephone network ("PSTN") or its functional equivalent, minutes of use for local service provided at no additional charge, access to emergency 911 and enhanced 911 service in locations where implemented, and toll limitation at no charge (subject to certain requirements and limitations).¹⁷ Tempo recognizes that pending rule changes may modify this requirement to include broadband service. Tempo certifies that its prepaid wireless Lifeline service offering satisfies the Commission's current definition of voice telephony service, and it therefore provides all services designated for support by the Commission.

Tempo's prepaid wireless Lifeline service offering provides voice grade access to the PSTN through its provision of resold wireless services from Sprint and T-Mobile. As described below, Tempo's prepaid wireless Lifeline service offerings provide a bucket of minutes of use to eligible consumers at no additional charge. In addition, as explained below, Tempo's prepaid wireless Lifeline service offering provides consumers with access to 911 and enhanced 911 to the extent local governments have implemented such services. Although Tempo understands it has an independent obligation to provide 911 and E911 services as a reseller,¹⁸ Tempo will rely on its contractual arrangements with Sprint and T-Mobile to provide such emergency services to consumers.

¹⁶ 47 C.F.R. § 54.101(a); *Lifeline Reform Order* ¶ 48.

¹⁷ *Lifeline Reform Order* ¶ 48.

¹⁸ 47 C.F.R. § 20.18(m).

With respect to toll limitation service, the *Lifeline Reform Order* eliminated the requirement to provide toll limitation services if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls.¹⁹ As explained more below, Tempo's prepaid wireless Lifeline service offerings offer a nationwide calling plan, and for those plans does not distinguish between toll and non-toll calls. Moreover, consumers purchasing Tempo's prepaid wireless Lifeline service offering have the ability to monitor their minute usage and balances from their handset, online, or through customer service.

B. Tempo Will Provide Service Throughout Its Designated Service Area

Tempo offers the services supported by federal universal service throughout its Designated Service Area. Tempo's requested Designated Service Area is the combined wireless coverage area and/or licensed service area of both Sprint and T-Mobile in the states of Alabama, Connecticut, Delaware, District of Columbia, Florida, Maine, New Hampshire, New York, North Carolina, Tennessee, Texas, and Virginia, which comprise a portion or the entirety of the telephone company study areas identified on **Exhibit 3**.

C. Tempo Satisfies the Requirements for Conditional Forbearance from the Facilities Requirement

Both the Act and the Commission's rules require a carrier seeking ETC designation to offer the supported services using its own facilities or a combination of its own facilities and resale of another carrier's services.²⁰ In the *Lifeline Reform Order*, however, the Commission decided to conditionally forbear from application of the Act's facilities requirement to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline

¹⁹ *Lifeline Reform Order* ¶ 49.

²⁰ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

program.²¹ Specifically, the Commission determined that conditional forbearance from the facilities requirement would apply if the carrier: (1) complied with certain 911 requirements and (2) filed and received approval of a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement the obligations contained in the *Lifeline Reform Order* as well as further safeguards against waste, fraud and abuse as the Wireline Competition Bureau may deem necessary.²² Tempo certifies that it meets the requirements for conditional forbearance as demonstrated in its FCC-approved Compliance Plan, which is attached as **Exhibit 1**. To the extent the Commission's regulations have been modified since approval of Tempo's Compliance Plan, Tempo hereby certifies that it complies with the FCC's current rules and regulations regarding the provision of Lifeline services as noted in Tempo's recently completed USAC Lifeline Compliance Audit.

Tempo's prepaid wireless Lifeline service offering complies with the 911 requirements outlined in the *Lifeline Reform Order* necessary for application of conditional forbearance. Tempo provides its prepaid wireless Lifeline subscribers with 911 and E911 access regardless of activation status and availability of minutes. Tempo also provides its Lifeline subscribers with E911-compliant handsets and replace, at no additional charge to the subscriber, any non-compliant handset. As noted above, Tempo will rely on its contractual arrangements with Sprint and T-Mobile to provide 911 and E911 services to consumers.²³ Tempo's MVNO arrangements with Sprint and T-Mobile specifically address 911/E911 services, and Tempo provides its customers with handsets that satisfy all Commission requirements.

²¹ *Lifeline Reform Order* ¶ 368.

²² *Lifeline Reform Order* ¶ 368.

²³ Tempo understands that it has an independent obligation to provide 911 and E911 services as a wireless reseller, and will utilize its underlying contractual arrangements with Sprint and T-Mobile to meet that obligation. *See, e.g.*, 47 C.F.R. § 20.18(m); *Lifeline Reform Order* at n.989.

In further support of Tempo's eligibility for the conditional grant of forbearance from the facilities requirement, Tempo provides a copy of its approved Compliance Plan in **Exhibit 1**, which was prepared in accordance with the requirements of the *Lifeline Reform Order* and the Public Notice issued by the Wireline Competition Bureau on February 29, 2012,²⁴ and was approved on August 8, 2012.²⁵

D. Tempo Will Advertise the Availability of the Supported Services and the Relevant Charges Using Media of General Distribution

Tempo publicizes the availability of its prepaid wireless Lifeline service offerings in a manner reasonably designed to reach those likely to qualify for the service.²⁶ Tempo utilizes the Commission's 2004 outreach guidelines for advertising its prepaid wireless Lifeline service offering.²⁷ Specifically, Tempo (1) utilizes outreach materials and methods designed to reach households that currently do not have telephone service, (2) develops advertising materials for non-English speaking populations within its service area, and (3) coordinates its outreach efforts with relevant government agencies.

Tempo's advertising for its prepaid wireless Lifeline service offering includes, but is not limited to, targeted direct mail, advertisements in daily and weekly print periodicals, billboards, and radio advertising. Tempo also coordinates with relevant state agencies, community outreach organizations, and non-profit organizations to make information available regarding Tempo's prepaid wireless Lifeline service offering in resource guides and other printed materials produced by those organizations, as well as in their offices or other locations visited by potential Lifeline-

²⁴ Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the *Lifeline Reform Order*, 27 FCC Rcd 2186 (2012).

²⁵ WC Docket Nos. 09-197 and 11-42, *Wireline Competition Bureau Approves the Compliance Plans of Birch Communications, Boomerang Wireless, IM Telecom, Q Link Wireless, and TAG Mobile*, 27 FCC Rcd 9184 (2012).

²⁶ 47 C.F.R. § 54.405(b).

²⁷ *Lifeline and Link Up*, 19 FCC Rcd 8302, ¶¶ 45-48 (2004).

eligible subscribers. Tempo also advertises through online search engines and third-party referral agents/dealers.²⁸ As required under the *Lifeline Reform Order*, Tempo ensures the Commission-required disclosures, any DBA names it uses, and details of the prepaid wireless Lifeline service offering are contained in all marketing materials.²⁹ An example of Tempo's current marketing materials is attached as **Exhibit 4**.

Over the past two years, Tempo has engaged in several different types of marketing activities in support of its Lifeline products: (1) community welfare organization outreach; (2) targeting in-market retail locations in where Lifeline-eligible residents shop, work, and live, such as grocery stores, convenience stores, independent wireless retailers, pawn shops, check-cashing businesses, and other retail businesses; (3) targeted media advertising; (4) Internet/online advertising; and (5) direct mail and other direct marketing.

Tempo routinely reaches out to community welfare organizations in the states in which it has been designated as an ETC. These organizations include, but are not limited to: county government social service agencies; multi-service non-profit social service agencies; crisis intervention centers; drug abuse and addiction counseling centers; educational service centers; family service centers; aging social service agencies and recreation/community centers; community centers; religious-based social service agencies; non-profit day care centers; and economic opportunity counseling centers. Tempo works with these organizations to identify potential customers, but also to identify the needs of the communities the organizations work with, and to find ways to support the organizations and their communities.

²⁸ Tempo explains its relationships with third-party dealers and retail outlets in its approved Compliance Plan (attached as **Exhibit 1**). Tempo confirms that internal personnel will be responsible for overseeing and finalizing every Lifeline enrollment prior to including that customer on a FCC Form 497 for reimbursement. Tempo will be responsible for the actions of all of its employees and agents, including those enrolling customers in any Tempo-owned, affiliated, or third-party retail location.

²⁹ *Lifeline Reform Order* ¶¶ 274-282.

Tempo also has developed relationships with third-party dealers that operate nationwide in Tempo's Designated Service Area. Tempo typically utilizes third-party dealers such as grocery stores, convenience stores, independent wireless retailers, pawn shops, and check-cashing businesses to market its Lifeline services. Tempo often holds kick-off outreach events at one of its third-party dealer locations. For example, in one state in which Tempo has been certified as an ETC, a Tempo sales representative has a relationship with a national women's advocacy program that focuses on abused women and children. Working with local community-driven and supported organizations, the Tempo sales representative will set up "shop" in a conference room at the organization's office or at an abuse shelter to provide information to potential customers, and facilitate the enrollment process for customers who qualify for Lifeline service. The Tempo sales representative uses the Tempo-required enrollment and certification forms and follows all Tempo-required processes to enroll the customer in the Lifeline program. As always, a Tempo employee verifies the customer's eligibility for Lifeline service (both through verification of income or program status and through the National Lifeline Accountability Database) before the customer is considered a Tempo Lifeline customer.

IV. TEMPO MEETS THE ADDITIONAL REQUIREMENTS FOR ETC DESIGNATION UNDER SECTION 54.202 OF THE COMMISSION'S RULES

Section 54.202 of the Commission's rules contains certain additional requirements for a common carrier³⁰ to be designated as an ETC. As set forth below, Tempo satisfies each of those requirements.

³⁰ Tempo will be a common carrier by virtue of its provision of wireless services. *See* 47 U.S.C. § 332(c)(1)(A) (an entity providing commercial mobile services is deemed to be a common carrier); *see also* 47 U.S.C. § 332(d)(1) (defining "commercial mobile service" to be any mobile service that is provided for profit and makes interconnected service available to the public).

A. Tempo Will Comply with the Service Requirements Applicable to Lifeline Support

Section 54.202(a)(1) of the Commission's rules requires a common carrier seeking ETC designation to (1) certify that it will comply with the service requirements applicable to the support that it receives Tempo hereby certifies that it complies with the service requirements applicable to Lifeline support as set forth herein and in its approved Compliance Plan set forth in

Exhibit 1.

B. Tempo Will Remain Functional in Emergency Situations

Section 54.202(a)(2) of the Commission's rules requires a common carrier seeking ETC designation to demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.³¹ Tempo's MVNO contract arrangements with Sprint and T-Mobile impose certain obligations on those carriers to ensure Tempo's prepaid wireless Lifeline service offerings remain functional during emergency situations.³² As large, nationwide wireless carriers, Sprint and T-Mobile are subject to regulatory requirements to remain functional during emergency situations.³³ Tempo's MVNO agreements with both carriers also contain certain quality of service guarantees.

As noted above, Tempo also relies on Birch for various operational functions. Birch has been offering telecommunications services since 1996, and thus has significant experience with

³¹ 47 C.F.R. § 54.202(a)(2).

³² Sprint and T-Mobile will provide the underlying wireless services to Tempo, but Birch will provide any necessary billing services associated with the Tempo prepaid wireless Lifeline product to the Tempo end user customer. The billing system and data center have three pooled physical hosts for a triple back-up redundancy plan. If any one of the three go down, one of the remaining two replace that server's functionality within seconds.

³³ Tempo is also familiar with the continuity and disaster response program Sprint and T-Mobile have implemented, which address the need to remain functional during emergency situations.

remaining functional in emergency situations.³⁴ As a CLEC/IXC, Birch is currently subject to the Commission's outage reporting rules, as well as the back-up power and outage requirements in the states in which Birch operates. As a successful, profitable CLEC for over 20 years Birch has disaster recovery contingency plans that include diverse/alternate routing, electronics redundancy, and environmental controls for data and switching centers. Tempo relies on Birch to apply these same measures to Tempo's prepaid wireless Lifeline service offering to the extent there is an emergency situation affecting Tempo's operations.

C. Tempo Will Satisfy Applicable Consumer Protection and Service Quality Standards

Section 54.202(a)(3) of the Commission's rules requires a common carrier seeking ETC designation to demonstrate that it will satisfy applicable consumer protection and service quality standards.³⁵ Tempo complies with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service to satisfy this requirement.

Tempo's customers will be able to reach a live customer service representative between the hours of 8:00am to 8:00pm Eastern, Monday through Friday, and between the hours of 9:00am to 6:00pm Eastern on Saturdays. After these hours, the customer will receive a message informing it of Tempo's normal business hours and offering the customer the ability to utilize an automated payment system to add additional minutes, etc. If the customer does not choose to use the automated payment system, a recorded message will inform the customer to call back during normal business hours.

³⁴ Birch is a competitive local exchange carrier ("CLEC") and interexchange carrier ("IXC"), and since 1996 has been providing high-quality, cost-effective integrated communications services and related information technology services to residential and small and medium-sized business ("SMB") customers. Today, Birch offers a variety of products, services and tailored solutions including local voice, long distance voice, wireless voice, broadband Internet, converged Internet Protocol ("IP") solutions, and related telecommunications and IT services. The Birch family of companies currently serves customers throughout 50 states and the District of Columbia.

³⁵ 47 C.F.R. § 54.202(a)(3).

D. Tempo Is Financially and Technically Capable of Providing Lifeline Services in Accordance with the Commission's Rules

Section 54.202(a)(4) of the Commission's rules requires a common carrier seeking ETC designation for Lifeline support to demonstrate it is financially and technically capable of providing Lifeline service in compliance with the Commission's rules.³⁶ The Commission stated that the "relevant considerations" for satisfying this requirement would be whether the applicant previously offered services to non-Lifeline consumers, how long the applicant has been in business, whether the applicant intends to rely exclusively on universal service fund disbursements to operate, whether the applicant receives funds from other sources, and whether the applicant has been subject to enforcement action or ETC revocation proceedings in other states.³⁷

Tempo has been in existence since 2012, and is financially capable of offering Lifeline services. Tempo does not intend to rely exclusively on universal service fund disbursements to operate, and receives revenues from other sources. In addition to Lifeline services, Tempo offers prepaid wireless voice and data services throughout the United States.

Further, Tempo has sufficient operating capital to provide prepaid wireless Lifeline services. Tempo is a wholly owned subsidiary of Birch, which is an established telecommunications company operating since 1996. The ultimate owners and management of Tempo are intimately familiar with the financial and technical needs of a telecommunications company. Tempo continues to utilize the same management and day-to-day operational personnel as utilized by Birch. In addition, Tempo and Birch share various network facilities,

³⁶ 47 C.F.R. § 54.202(a)(4); *see also Lifeline Reform Order* ¶ 387.

³⁷ *Lifeline Reform Order* ¶ 388.

back office, billing, and customer support functions necessary for Tempo to provide both its Lifeline and non-Lifeline services.

Finally, Tempo is reselling the wireless services of Sprint and T-Mobile for both its Lifeline and non-Lifeline services. Sprint and T-Mobile provide wholesale capacity to numerous wireless resellers. Like several other prepaid wireless providers, Sprint and T-Mobile will provide Tempo with the network infrastructure and wireless transmission facilities needed for Tempo to offer service as a MVNO. Sprint and T-Mobile as large, nationwide carriers, serve several other MVNOs offering wireless Lifeline products. Tempo's three-year partnership with Sprint and two-year partnership with T-Mobile further demonstrate that Tempo is technically and financially capable of providing a prepaid wireless Lifeline service.

E. Tempo Will Provide Prepaid Wireless Lifeline Service Plans to Eligible Consumers

Section 54.202(a)(5) of the Commission's rules require a common carrier seeking ETC designation for Lifeline support to submit information describing the terms and conditions of the voice telephony plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges for toll calls (if any), and rates for each such plan.³⁸ At this time, in addition to some required state specific plans, Tempo offers two prepaid wireless Lifeline options at no charge to the customer. Specifically, the customer can choose between the following options:

Option 1

250 nationwide minutes

Option 2

150 nationwide minutes with the ability to rollover unused minutes to the next month

Either option also will provide the customer with:

³⁸ 47 C.F.R. § 54.202(a)(5).

- Wireless handset (there are several handset options) - at least one free choice and the possibility of additional choices³⁹
- Voicemail
- National texting, with three (3) texts counting as one (1) minute
- 911 and E911 access as available
- Custom calling features such as call waiting, call forwarding, and caller ID
- Web/Internet usage, with 1 megabyte (MB) counting as two (2) minutes of use (Web/Internet access dependent on handset)
- Option to purchase additional minutes (which can also be used for texting and Web/Internet access as described above) anytime during the month that are available for 30 days from purchase (and will carry over into the next month) at the following rates:

Additional Minutes	Price
60	\$5.95
100	\$9.95
200	\$14.95

Tempo's planned prepaid wireless Lifeline service offering is consistent with the Act's requirement that consumers have access to quality services at "just, reasonable, and affordable rates,"⁴⁰ and is consistent with the Commission's findings that Lifeline consumers should have the option to purchase bundled packages, additional calling features, and optional voice services.⁴¹

As set forth in Tempo's approved Compliance Plan (attached as **Exhibit 1**), Tempo has established processes for ensuring Lifeline services are provided only to eligible customers,

³⁹ Tempo offers a variety of handsets to its Lifeline customers based on market availability and handset prices, but all handsets will be compliant with all applicable Commission requirements. Handsets currently are offered for free in conjunction with the prepaid wireless Lifeline product and Tempo continues to evaluate offering premium handsets for an additional cost.

⁴⁰ 47 U.S.C. § 254(b)(1).

⁴¹ *Lifeline Reform Order* ¶ 317.

including procedures for confirming consumer eligibility, enrolling eligible customers, re-certifying eligibility at regular intervals, and recordkeeping. Attached as **Exhibit 5** are updated versions of Tempo's initial enrollment and certification form, which will also be used for re-certification as explained in Tempo's approved Compliance Plan (attached as **Exhibit 1**). Tempo previously revised its forms based on a request from Commission staff to include a statement that not all Lifeline services are marketed under the "Lifeline" name, and may be offered under other names, and to clarify that certain consumer information will be provided to the Universal Service Administrative Company for the purpose of verifying eligibility and maintaining the information in a database. Tempo has made similar changes to its script for third party verification ("TPV") of Lifeline eligibility, and has informed its customer service representatives to include these statements in any oral disclosures given to potential Lifeline customers. Tempo also confirms in response to an earlier request from Commission staff that a Tempo employee is responsible for overseeing and finalizing every Lifeline enrollment prior to including that customer on a FCC Form 497 for reimbursement. Tempo is responsible for the actions of all of its employees and agents, including those enrolling customers in any Tempo-owned, affiliated, or third-party retail location.⁴²

F. Designation of Tempo as a Lifeline-Only ETC Is in the Public Interest

Section 54.202(b) of the Commission's rules requires the Commission make a public interest finding prior to making an ETC designation.⁴³ Designation of Tempo as an ETC for Lifeline support serves the public interest. Tempo's ETC designation will bring another competitive alternative to low-income consumers in the Designated Service Area, and will exert

⁴² Tempo explains its relationships with third-party dealers and retail outlets in its approved Compliance Plan (attached as **Exhibit 1**).

⁴³ 47 C.F.R. § 54.202(b).

further competitive pressures on existing wireless Lifeline providers operating in the Designated Service Area. Tempo seeks to make it easier for low-income consumers located within the Designated Service Area to receive affordable telecommunications services that are comparable to those enjoyed by other consumers. Tempo's ETC designation serves the public interest by providing services to a portion of the public that may not otherwise be able to obtain telecommunications services. Prepaid wireless services also offer consumers convenience, control over their telecommunications spending without the imposition of high monthly fees, and the ability to pay for only those services needed. The goals of universal service mandated by Congress and the Commission are therefore served by designation of Tempo as a Lifeline-only ETC.⁴⁴

V. TEMPO MEETS THE REQUIREMENTS FOR LIFELINE SERVICES UNDER SECTION 54.405 OF THE COMMISSION'S RULES

Under Section 54.405 of the Commission's rules, an ETC has certain obligations to offer Lifeline service.⁴⁵ Tempo understands these obligations and meets them as described below.

A. Tempo Will Make Lifeline Service Available as Defined under the Commission's Rules

Section 54.405(a) of the Commission's rules requires an ETC to make available Lifeline service, as defined in Section 54.401 of the Commission's rules,⁴⁶ to qualifying low-income consumers.⁴⁷ Tempo certifies that its prepaid wireless Lifeline service offering conforms to the current definition of "Lifeline" in the Commission's rules.

⁴⁴ 47 U.S.C. § 254.

⁴⁵ 47 C.F.R. § 54.405.

⁴⁶ 47 C.F.R. § 54.401.

⁴⁷ 47 C.F.R. § 54.405(a).

B. Tempo Will Publicize the Availability of Lifeline Service

Section 54.405(b) of the Commission’s rules requires an ETC to publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.⁴⁸ As described above in Section III.D., Tempo publicizes the availability of its prepaid wireless Lifeline service offering in a manner reasonably designed to reach eligible consumers.

C. Tempo Will Include Certain Disclosures on Materials Describing Its Lifeline Service, Including the Name of the ETC

Sections 54.405(c) and (d) of the Commission’s rules require an ETC to make certain disclosures on all materials describing the Lifeline service offering, including the name of the ETC.⁴⁹ As noted above in Section III.D., Tempo ensures that all materials describing its prepaid wireless Lifeline service offering use easily understood language to indicate that the service is a Lifeline service, that Lifeline is a government assistance program, that the service is non-transferrable, that only eligible consumers may enroll in the program, and that the program is limited to one discount per household as required under the rules.⁵⁰ Tempo also ensures that all materials describing its prepaid wireless Lifeline service offering include its name as well as its D/B/A name of “Tempo” as the name of the ETC providing services.⁵¹ Tempo understands that the term “materials describing the service” include all print, audio, video, and web materials used to describe or enroll in the Lifeline service offering, including application and certification forms.⁵²

⁴⁸ 47 C.F.R. § 54.405(b).

⁴⁹ 47 C.F.R. § 54.405(c), (d).

⁵⁰ 47 C.F.R. § 54.405(c).

⁵¹ 47 C.F.R. § 54.405(d).

⁵² 47 C.F.R. § 54.405(c).

D. Tempo Will Comply with the Commission's De-Enrollment Procedures

Section 54.405(e) of the Commission's rules requires an ETC to impose certain de-enrollment procedures for Lifeline services.⁵³ Tempo complies with the Commission's de-enrollment procedures as described more fully in the approved Compliance Plan set forth in **Exhibit 1**, and with any Commission revisions to the de-enrollment process that may be adopted in the future. As discussed in the Compliance Plan, Tempo de-enrolls Lifeline customers for duplicative support, for non-usage, and for failure to re-certify, and has general de-enrollment procedures in place that comply with current Commission requirements.

VI. ANTI-DRUG ABUSE CERTIFICATION

Tempo certifies that, pursuant to Sections 1.2001 through 1.2003 of the Commission's rules, that neither Tempo nor its subsidiaries, affiliates, officers, directors, or persons holding 5% or more of its outstanding stock, are subject to a denial of federal benefits, including Commission benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.⁵⁴

⁵³ 47 C.F.R. § 54.405(d).

⁵⁴ *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 12 FCC Rcd 22947, 22948-949 (1997).

CONCLUSION

WHEREFORE, for the forgoing reasons, Tempo respectfully requests that the Commission expeditiously designate it as an ETC for the provision of prepaid wireless Lifeline services in the states of Alabama, Connecticut, Delaware, District of Columbia, Florida, Maine, New Hampshire, New York, North Carolina, Tennessee, Texas, and Virginia.

Respectfully submitted,

TEMPO TELECOM, LLC

/s/ Angela F. Collins

Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8930 (telephone)
866-814-6582 (facsimile)
acollins@cahill.com

Dated: October 24, 2016

Its Attorneys

EXHIBIT 1

FCC-Approved Compliance Plan

Tempo Telecom, LLC Compliance Plan

Tempo Telecom, LLC (f/k/a Now Communications, LLC) has adopted the following Further Amended Compliance Plan of Birch Communications, Inc. dated June 29, 2012, which was approved by the Wireline Competition Bureau on August 8, 2012. *See Wireline Competition Bureau Approves the Compliance Plans of Birch Communications, Boomerang Wireless, IM Telecom, Q Link Wireless, and TAG Mobile, 27 FCC Rcd 9184 (2012).*

The Wireline Competition Bureau confirmed the adoption of the Compliance Plan by Tempo Telecom, LLC (f/k/a Now Communications, LLC) on December 20, 2012. *See Wireline Competition Bureau Seeks Comment on Petitions for Designation as a Low-Income Eligible Telecommunications Carrier filed by Now Comm, Zing PCS, LTS, Odin Wireless, and TX Mobile, 27 FCC Rcd 15937 (2012)* (“The Wireline Competition Bureau has approved Birch’s compliance plan, which will also apply to Now Comm.”).

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
BIRCH COMMUNICATIONS, INC.)	WC Docket No. 09-197
)	
Compliance Plan)	WC Docket No. 11-42
)	
)	
Petition for Designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act for Lifeline Support Only)	
)	
)	

FURTHER AMENDED COMPLIANCE PLAN OF BIRCH COMMUNICATIONS, INC.

Birch Communications, Inc. (“Birch”), by its attorneys, respectfully submits this Amended Compliance Plan to be associated with its Petition for designation as an eligible telecommunications carrier (“ETC”) pursuant to Section 214(e)¹ of the Communications Act of 1934, as amended (the “Act”), and Section 54.201² of the rules and regulations of the Federal Communications Commission (“Commission”), which was filed on April 27, 2012 in the above-referenced matters. Birch’s original Compliance Plan was filed May 7, 2012, and an amendment was filed June 1, 2012. Birch seeks ETC designation for Lifeline support only to provide prepaid wireless services under the “NOW Communications” brand name in the non-rural areas of the following states: Alabama, Florida, North Carolina, and Tennessee (the “Designated Service Area”).³

¹ 47 U.S.C. § 214(e).

² 47 C.F.R. § 54.201.

³ Birch is reviewing whether a separate legal entity should be established for the provision of its prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities, such as Birch Telecom of the South, Inc. (FCC Filer ID 820616), which is a subsidiary of Birch and operates as a certificated carrier in Alabama, Florida, North Carolina, and Tennessee. More information on Birch’s corporate structure is set forth herein.

Both the Act and the Commission's rules require a carrier seeking ETC designation to offer the supported services using its own facilities or a combination of its own facilities and resale of another carrier's services.⁴ In the *Lifeline Reform Order*, however, the Commission decided to conditionally forbear from application of the Act's facilities requirement to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program.⁵ Specifically, the Commission determined that conditional forbearance from the facilities requirement would apply if the carrier: (1) complied with certain 911 requirements and (2) filed and received approval of a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement the obligations contained in the *Lifeline Reform Order* as well as further safeguards against waste, fraud and abuse as the Wireline Competition Bureau may deem necessary.⁶

To avail itself of the Commission's conditional grant of forbearance from the facilities requirement, Birch provides this Compliance Plan in accordance with the requirements of the *Lifeline Reform Order*⁷ and the *Public Notice* issued by the Wireline Competition Bureau on February 29, 2012.⁸ Specifically, Birch's Compliance Plan provides information regarding Birch's planned Lifeline service offerings and outlines the measures Birch will take to implement the obligations contained in the *Lifeline Reform Order* as well as further safeguards

⁴ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

⁵ *Lifeline Reform Order* ¶ 368.

⁶ *Lifeline Reform Order* ¶ 368.

⁷ WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45, *Lifeline and Link Up Reform and Modernization, et al.*, FCC 12-11, Report and Order and Further Notice of Proposed Rulemaking, ¶ 368 ("*Lifeline Reform Order*").

⁸ WC Docket Nos. 09-197, 11-42, *Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the Lifeline Reform Order*, Public Notice, DA 12-314 (rel. Feb. 29, 2012) ("*Public Notice*").

against waste, fraud and abuse. To that end, Birch provides the information requested in the *Public Notice*, which indicated compliance plans should contain the following:

(1) Information about the carrier and the Lifeline plans it intends to offer:

(a) names and identifiers used by the carrier, its holding company, operating company and all affiliates;

Birch is a competitive local exchange carrier (“CLEC”) and interexchange carrier (“IXC”), and since 1996 has been providing high-quality, cost-effective integrated communications services and related information technology services to residential and small and medium-sized business (“SMB”) customers. Today, Birch offers a variety of products, services and tailored solutions including local voice, long distance voice, broadband Internet, converged Internet Protocol (“IP”) solutions, and related telecommunications and IT services.

Birch is a Georgia corporation with offices located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305 and 2300 Main Street, Suite 340, Kansas City, MO 64108. Birch has authority to provide interstate and international telecommunications services from the Commission.⁹ Birch’s wholly-owned subsidiary, Birch Communications of Virginia, Inc., operates pursuant to Birch’s international 214 authority and is registered to provide interstate telecommunications services.¹⁰ Birch’s wholly-owned subsidiary, Birch Telecom, Inc., has authority to provide international telecommunications services.¹¹ The following wholly-owned subsidiaries of Birch Telecom, Inc. operate pursuant to Birch Telecom Inc.’s international authority and also provide interstate telecommunications services: Birch Telecom of the South, Inc., Birch Telecom of the West, Inc., Birch Telecom of the Great Lakes, Inc., Birch Telecom of Missouri, Inc., Birch Telecom of Oklahoma, Inc., Birch Telecom of Texas Ltd., LLP, Birch

⁹ IB File No. ITC-214-19970926-00584, FCC Filer ID 815113.

¹⁰ FCC Filer ID 828502.

¹¹ IB File No. ITC-214-19990701-00441.

Telecom of Kansas, Inc., Birch Communications of the Northeast, Inc., Ionex Communications, Inc., Ionex Communications South, Inc., and Ionex Communications North, Inc.¹² Each of these subsidiaries also operates under the D/B/A name of “Birch Communications,” and certain of Birch’s subsidiaries also serve customers under the brand name “NOW Communications.”¹³ Customers purchasing Birch’s prepaid wireless Lifeline service offering will see the “NOW Communications” logo.¹⁴

The Birch family of companies either offer service or are certificated to offer telecommunications services as CLECs and intrastate IXCs in the following 38 states: Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, North Dakota, Nebraska, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin, and Wyoming. The Birch family of companies currently serves approximately 118,000 customers throughout Birch’s 38-state territory.

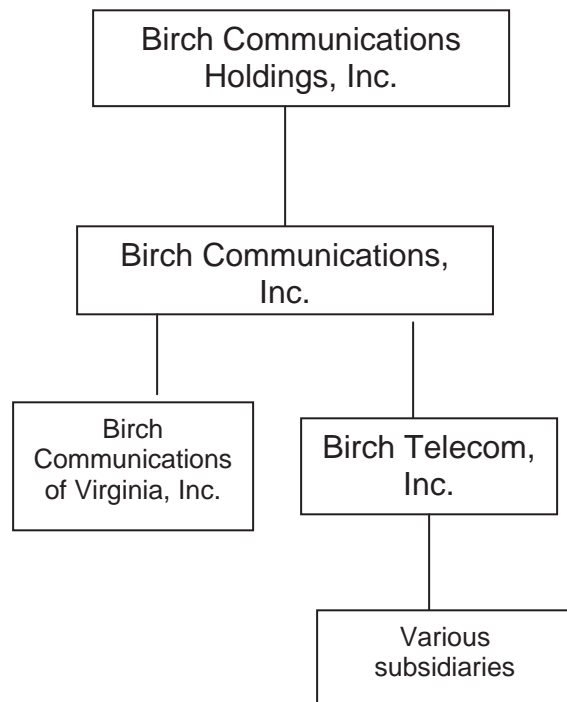
Birch Communications Holdings, Inc. (“Birch Holdings”) owns a 100% voting and equity interest in Birch. Birch Holdings is a Georgia corporation whose principal business is

¹² Birch Telecom of the South, Inc. (FCC Filer ID 820616), Birch Telecom of the West, Inc. (FCC Filer ID 827985), Birch Telecom of the Great Lakes, Inc. (FCC Filer ID 826636), Birch Telecom of Missouri, Inc. (FCC Filer ID 819422), Birch Telecom of Oklahoma, Inc. (FCC Filer ID 820061), Birch Telecom of Texas LTD LLP (FCC Filer ID 819948), Birch Telecom of Kansas, Inc. (FCC Filer ID 807993), IONEX Communications, Inc. (FCC Filer ID 815376), Birch Communications of the Northeast, Inc. (FCC Filer ID 828483), Ionex Communications South, Inc. (FCC Filer ID 808443), Ionex Communications North, Inc. (FCC Filer ID 815082).

¹³ These subsidiaries are Birch Telecom of the South, Inc., Birch Telecom of Missouri, Inc., Birch Telecom of Kansas, Inc., Birch Telecom of Oklahoma, Inc., and Birch Telecom of Texas Ltd., L.L.P. Birch acquired the use of the “NOW Communications” trade name in an earlier asset acquisition.

¹⁴ Birch is reviewing whether a separate legal entity should be established for the provision of its prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities, such as Birch Telecom of the South, Inc. (FCC Filer ID 820616), which is a certificated carrier in Alabama, Florida, North Carolina, and Tennessee.

telecommunications holdings. The address for Birch Holdings is 3060 Peachtree Road, NW, Suite 1065, Atlanta, GA 30305. Below is Birch's organizational chart:



The following entities and individuals hold a ten percent (10%) or greater direct or indirect ownership interest in Birch Holdings: (1) Holcombe Green, a U.S. citizen, owns a 66% voting and equity interest in Birch Holdings and (2) R. Kirby Godsey, a U.S. citizen, owns a 32% voting and equity interest¹⁵ in Birch Holdings. The business address for both Mr. Green and Mr. Godsey is 3060 Peachtree St., NW, Suite 1060, Atlanta, GA 30305. None of the entities or individuals holding an interest in Birch or Birch Holdings hold any interests in other telecommunications-related entities.

¹⁵ R. Kirby Godsey holds his percentage through his individual holdings and through the R. Kirby Godsey 2008 Grantor Retained Annuity Trust.

(b) detailed information demonstrating that the carrier is financially and technically capable of providing the supported Lifeline service in compliance with the Commission's rules;

The Commission has stated that the “relevant considerations” for demonstrating that a carrier is financially and technically capable would be whether the applicant previously offered services to non-Lifeline consumers, how long the applicant has been in business, whether the applicant intends to rely exclusively on universal service fund disbursements to operate, whether the applicant receives funds from other sources, and whether the applicant has been subject to enforcement action or ETC revocation proceedings in other states.¹⁶ Birch has been operating as a CLEC/IXC since 1996, and currently operates in 38 states. In addition to the other services it offers, Birch has been providing wireline Lifeline services in 18 states as a non-ETC reseller using resold services obtained from AT&T for numerous years. Birch serves approximately 1800 wireline Lifeline customers at this time as a non-ETC reseller. Birch does not, and will not, rely on universal service fund disbursements to operate - the majority of Birch's funds to operate will come from the non-Lifeline services it provides throughout its 38-state territory. Birch has not been subject to an abnormal number of enforcement proceedings given the significant number of customers it serves and the more than 15 years it has been offering service.

With respect to the prepaid wireless Lifeline service, Birch will resell the wireless services of Sprint, which provides wholesale capacity to wireless resellers. Like several other prepaid wireless providers, Sprint will provide Birch with the network infrastructure and wireless transmission facilities needed for Birch to offer service as a Mobile Virtual Network Operator (“MVNO”). Sprint is a large, nationwide carrier, and serves several other MVNOs offering

¹⁶ *Lifeline Reform Order* ¶ 388.

wireless Lifeline products.¹⁷ Birch's partnership with Sprint further demonstrates that Birch is technically capable of providing a prepaid wireless Lifeline service.

(c) detailed information, including geographic locations, of the carrier's current service offerings if the carrier currently offers service;

Please see Birch's response to 1(a) above. Birch currently provides local, toll, domestic long distance, and international long distance as a CLEC/IXC in the 38 states listed above. Birch also provides broadband Internet, converged IP solutions, and related telecommunications and IT services throughout its 38-state service territory.

(d) the terms and conditions of each Lifeline service plan offering, including rates, the number of minutes provided, and additional charges, if any, for toll calls; and

At this time, Birch plans to offer the following prepaid wireless Lifeline plan at no charge to an eligible customer:

Basic Plan Prepaid Wireless Lifeline Plan

Wireless handset (there are several handset options) - at least one free choice and the possibility of additional choices¹⁸

250 nationwide minutes per month

Voicemail

National texting, with each text sent or received counting as 1 minute

911 and E911 access as available

Option to purchase additional minutes anytime during the month that carry over for 2 months

Option for international calling with per-minute pricing based on the country to be called, which will be provided to the consumer when opting for this capability

¹⁷ Based on filings made with the Commission, it appears Sprint also provides underlying MVNO services to other carriers such as PlatinumTel, i-wireless, and CAL Communications, which also have sought ETC designation from the Commission.

¹⁸ Birch is still considering which handsets will be offered, but all handsets will be compliant with all applicable Commission requirements. Handsets will be offered for free in conjunction with the prepaid wireless Lifeline product. Based upon market availability and handset prices, the consumer may have a choice of handsets. Birch is continuing to evaluate the possibility of offering premium handsets at an additional cost, but a free handset will always be offered to every prepaid wireless Lifeline subscriber.

<u>Additional minutes</u>	
Minutes	Price
200	13.95
250	16.95
300	19.95
400	25.95
900	49.95

Available minutes are nationwide, and there are no additional charges for toll calling.

(e) all other certifications required under newly amended section 54.202 of the Commission's rules.

Section 54.202 of the Commission's rules requires a common carrier seeking ETC designation to: (1) certify that it will comply with the service requirements applicable to the support that it receives;¹⁹ (2) submit a five-year plan for proposed improvements or upgrades to the applicant's network unless the applicant is seeking Lifeline support only;²⁰ (3) demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations;²¹ (4) demonstrate that it will satisfy applicable consumer protection and service quality standards;²² (5) demonstrate it is financially and technically capable of providing Lifeline service in compliance with the Commission's rules;²³ and (6) submit information describing the terms and conditions of the voice telephony plans offered to

¹⁹ 47 C.F.R. § 54.202(a)(1)(i).

²⁰ 47 C.F.R. § 54.202(a)(1)(ii).

²¹ 47 C.F.R. § 54.202(a)(2).

²² 47 C.F.R. § 54.202(a)(3).

²³ 47 C.F.R. § 54.202(a)(4).

Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges for toll calls (if any), and rates for each such plan.²⁴

Birch has addressed (5) and (6) above in (1)(b) and (1)(d), and the five-year plan required under (2) is no longer applicable given that Birch seeks designation for Lifeline support only.²⁵

With respect to (1), Birch seeks ETC designation for Lifeline support only, and therefore certifies that it will comply with the service requirements applicable to Lifeline support.

With respect to (3), Birch has the ability to remain functional in emergency situations. Birch has been offering telecommunications services since 1996, and thus has significant experience with remaining functional in emergency situations. As a CLEC/IXC, Birch is currently subject to the Commission's outage reporting rules, as well as the back-up power and outage requirements in the states in which Birch operates. As a successful, profitable CLEC for over 15 years Birch has disaster recovery contingency plans that include diverse/alternate routing, electronics redundancy, dual data centers geographically separated, and environmental controls for data and switching centers. Birch will apply these same measures to its prepaid wireless Lifeline service offering to the extent there is an emergency situation affecting Birch's operations. Birch's MVNO contract arrangement with Sprint also imposes certain obligations on Sprint to ensure Birch's prepaid wireless Lifeline service offering remains functional during emergency situations.²⁶ As a large, nationwide wireless carrier, Sprint is subject to regulatory

²⁴ 47 C.F.R. § 54.202(a)(5).

²⁵ *Lifeline Reform Order* ¶ 386.

²⁶ While Sprint will provide the underlying wireless services to Birch, Birch will provide billing services associated with the prepaid wireless Lifeline product to the Birch end user customer. The Birch billing system will be served by two geographically separate data centers for back-up redundancy, one currently located in Macon, Georgia and the other in Emporia, Kansas.

requirements to remain functional during emergency situations.²⁷ Birch's MVNO agreement with Sprint also contains certain quality of service guarantees.

With respect to (4), Birch will satisfy applicable consumer protection and service quality standards. As a CLEC/IXC, Birch is currently subject to the consumer protection and service quality standards promulgated by the Commission and the states in which Birch operates. Birch will apply these same practices to its prepaid wireless Lifeline service product, and will comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service to satisfy this requirement as permitted by the Commission's rules.²⁸

(2) A detailed explanation of how the carrier will comply with the Commission's new rules relating to determinations of subscriber eligibility for Lifeline services, including all of the consumer eligibility, consumer enrollment, and re-certification procedures, as required by Section VI and Appendix C of the *Lifeline Reform Order*, and a copy of the carrier's certification form.

Birch currently offers wireline Lifeline services as a non-ETC reseller. Birch is therefore intimately familiar with the Commission's procedures for confirming consumer eligibility, enrolling eligible customers, re-certifying eligibility at regular intervals, and recordkeeping. Birch plans to build on that expertise in offering its prepaid wireless Lifeline service offering as an ETC. Birch has implemented the Commission's *Lifeline Reform Order* rule changes into its existing wireline, non-ETC Lifeline program.²⁹ Birch will utilize the same processes outlined below for both its prepaid wireless Lifeline service (as an ETC) and its wireline Lifeline service (as a non-ETC reseller) to the extent applicable.

²⁷ Birch is also familiar with the continuity and disaster response program Sprint has implemented, which addresses the need to remain functional during emergency situations.

²⁸ 47 C.F.R. § 54.202(a)(3).

²⁹ Birch recently received and executed a certification form from AT&T, its underlying provider for its resold Lifeline services, in which Birch certified its compliance with the FCC's *Lifeline Reform Order* requirements for Birch's provision of wireline Lifeline services as a non-ETC reseller.

Set forth as Attachment A is an initial draft of Birch's prepaid wireless Lifeline enrollment and certification forms. Birch is continuing to refine these documents and will make any necessary changes to the extent the Commission or the Universal Service Administrative Company ("USAC") issue additional guidance on the language to be contained on enrollment and certification forms. Birch also confirms that it will comply with any future Commission or USAC guidance, directives, or rule changes regarding the Lifeline program.

Consumer Eligibility

Under its current procedures for its wireline Lifeline offering (as a non-ETC reseller), Birch utilizes the Texas Low Income Database Administrator database to verify and document a Texas consumer's eligibility for Lifeline service. Until a national database is available, Birch will utilize available state-level databases to verify eligibility for its prepaid wireless Lifeline service offering as required under the Commission's rules. Where state-level database technology is not available, Birch will require potential customers to provide their proof of eligibility documentation directly to Birch (either via facsimile, U.S. mail, electronic mail, or through a Birch-authorized third-party dealer as discussed below). New subscribers can be added to the Lifeline program through Birch internal sales agents or through Birch-authorized third-party dealers. Birch currently utilizes approximately 100 third-party dealers for its wireline Lifeline product (non-ETC reseller), and plans to offer its wireless Lifeline product at those same locations plus additional locations that would be frequented by the target audience for Lifeline services. Birch's current third-party dealers include check cashing locations, grocery stores, computer stores, independent telephone retailers, storage facilities, beauty supply stores, and pawn shops. Once wireless Lifeline service is implemented, Birch plans to add independent wireless retailers and mall kiosks to its potential third-party dealer locations.

In the internal sales agent situation, the potential subscriber would provide its eligibility documentation to Birch and would complete the enrollment and certification form in paper format, via third-party verification (or “TPV”), or via electronic signature as described in the “Enrollment and Certification” section below. As described in more detail below, the handset would then be shipped to the customer after Birch verifies the customer’s eligibility to obtain a Lifeline product and has obtained all necessary certifications from the customer. The flow-chart in Attachment B-1 provides more detail on the process using internal sales agents.

At the third-party retail location, a potential subscriber can provide its eligibility information in-person to the third-party dealer, which will then be transmitted to Birch for review as explained below. The potential subscriber can also complete the enrollment and certification form discussed further below and a draft of which is set forth in Attachment A. As described in more detail below, the handset would then be shipped to the customer after Birch verifies the customer’s eligibility to obtain a Lifeline product and has obtained all necessary certifications from the customer. The flow-chart in Attachment B-2 provides more detail on the process using third-party retail locations. To ensure compliance with the Commission’s one-per-household and other Lifeline eligibility requirements, Birch will require its third-party dealers to have their employees participate in quarterly webinars to receive training (and re-training) on Commission-compliance requirements for Lifeline services. Birch will also supply each third-party dealer with copies of written materials providing detailed information on the Commission’s Lifeline compliance requirements. Birch will then require the third-party dealer to sign documentation certifying that all employees selling Birch Lifeline services have read the Lifeline compliance requirements provided by Birch, understand the Lifeline compliance requirements,

and will comply with the Lifeline compliance requirements. Birch will conduct periodic audits and random checks of its third-party dealers to ensure compliance with the Commission's rules.

It is important to note that, even when a customer signs up for Lifeline service through a third-party dealer, eligibility information provided by potential consumers will be reviewed by appropriate Birch personnel pursuant to Birch's internal policies for review of Lifeline eligibility documents. Until such time as there is adequate database access allowing third-party dealers to confirm eligibility automatically through Commission-sanctioned databases, all initial eligibility determinations will be made by Birch personnel. And even after third-party dealers have access to eligibility databases, Birch will review and verify a consumer's eligibility prior to seeking reimbursement for that customer. As part of confirming a potential customer's eligibility, Birch personnel will also confirm that there is no Lifeline duplication using the process discussed under (5) below. Detailed information regarding the documents provided by the potential customer and Birch's review of the documentation will be included in the customer's account information as kept in Birch's internal recordkeeping system. Any actual documentation provided by the potential customer will be destroyed or returned to the customer upon request.³⁰

Enrollment and Certification

Once Birch determines a potential customer is eligible to receive a Lifeline service product, Birch will proceed to enroll the customer in its prepaid wireless Lifeline program and obtain the necessary certifications under the Commission's rules (this can be done by an internal Birch sales agent or a Birch-authorized third-party dealer as explained above). In its current wireline Lifeline service offering (as a non-ETC reseller), Birch utilizes TPV to enroll customers and confirm their certification for Lifeline eligibility in addition to paper enrollment/certification

³⁰ *Lifeline Reform Order* ¶ 101.

forms. Birch plans to continue utilizing TPV for its prepaid wireless Lifeline service product³¹ to the extent Birch can ensure all Commission-required information is included in the TPV without the process becoming too unwieldy for the potential customer. Birch also plans to make paper forms available for enrollment/certification and also is looking to develop an online portal that potential customers could access via any Internet connection, including at their local libraries or social service organizations for electronic signature of the required documentation.

As part of the enrollment/certification process, Birch will first obtain the relevant contact information from the potential customer: (a) full name; (b) full residential address; (c) whether the residential address is permanent or temporary; (d) billing address if different than residential; (e) date of birth, (f) last 4 digits of Social Security Number; (g) if qualifying under federal or state assistance program, which program; and (h) if qualifying under income-based criteria, the number of individuals in the household. Birch will also require the customer to indicate whether the household is shared, which would trigger the use of the Lifeline Household Worksheet developed by USAC (included as part of Birch's draft enrollment and certification form set forth in Attachment A). Birch will also confirm that the customer understands its information may be shared with USAC as necessary under the Commission's rules and to ensure there is no duplication of Lifeline benefits.

Next, Birch will utilize its TPV script or the paper form (or online portal once developed) to address each of the certifications required under the Commission's rules. The certifications will be addressed through individual questions, each to be answered by the customer before

³¹ The Commission has recognized TPV is an acceptable method for obtaining such information. *See Lifeline Reform Order* ¶ 169.

moving any further in the TPV script³² or each to be initialed by the customer on the paper form (or each to be individually acknowledged in an online format):

- Certifying, under penalty of perjury, that the consumer meets the Lifeline eligibility requirements because either the household receives benefits from a qualifying state or federal assistance program (and naming the program) or has income at or below 135% of the Federal Poverty Guidelines;
- Certifying, under penalty of perjury, that the consumer has presented documentation to Birch that accurately represents the consumer's household income or participation in the program;
- Certifying, under penalty of perjury, that the consumer will notify Birch within 30 days when it is no longer eligible for Lifeline service, whether because the consumer no longer qualifies, it has another Lifeline supported service, or for any other reason, and confirming that the customer understands failure to so notify Birch may subject it to penalties;
- Certifying, under the penalty of perjury, that the information the consumer is providing to Birch is true and correct to the best of its knowledge;
- Certifying, under the penalty of perjury, that the consumer understands that providing false or fraudulent information to receive Lifeline benefits is punishable by law;
- Certifying, under penalty of perjury, that the consumer understands it will be required to annually re-certify its continued eligibility for Lifeline at any time and that failure to do so will result in the termination of the consumer's Lifeline benefits;

³² The customer will be required to answer "Yes" to these questions on the recorded TPV to enroll in Birch's prepaid wireless Lifeline program. TPV recordings are searchable by confirmation number and primary telephone number assigned to the customer. TPV confirmation numbers will be stored in the order and account notes associated with the customer.

- Certifying, under penalty of perjury, that the consumer will provide its new address to Birch within 30 days of moving;
- Certifying, under penalty of perjury, that the consumer will be required to verify its temporary address every 90 days if the subscriber provides a temporary residential address when initially enrolling;
- Certifying, under penalty of perjury that the subscriber's household is receiving no more than one Lifeline-supported service, that the consumer receives Lifeline-supported service only from Birch, and to the best of the consumer's knowledge no one else in the subscriber's household is receiving a Lifeline-supported service;
- Certifying that the consumer understands that Lifeline is a government benefit and consumers who willfully make false statements in order to obtain the benefit can be punished by fine or imprisonment or can be barred from the program;
- Certifying that the consumer understands that Lifeline is a non-transferrable benefit, and that an eligible Lifeline subscriber may not transfer its phone service to anyone else, not even someone who is also eligible;
- Certifying that the consumer understands that non-usage of its prepaid wireless Lifeline service from Birch for any consecutive 60-day period of time will result in de-enrollment and deactivation of the service; and
- Certifying that the consumer understands that (a) Lifeline is a federal benefit; (b) Lifeline service is available for only one line per household; (c) a household is defined for purposes of the Lifeline program as any individual or group of individuals who live together at the same address and share income and expenses; (d) a household is not permitted to receive Lifeline benefits from multiple providers; and (e) violation of the

one-per-household rule constitutes a violation of Commission rules and will result in the consumer's de-enrollment from the program and could result in criminal prosecution by the United States government.

Birch will ensure its TPV script and paper documentation is written in clear, easily understood language. Birch will retain its TPV recordings and copies of its paper enrollment/certification documentation for at least five (5) years.

Once all eligibility determinations and documentation requirements are complete, Birch will ship the handset to the customer via overnight delivery to the address listed on the enrollment form. Birch will require the customer to take affirmative steps to "personally activate" the service, either by requiring the customer to use the handset to activate the Lifeline service or to complete an outgoing call.³³ If service is not initiated, Birch will not consider the consumer to be enrolled in the Lifeline program and Birch will not request Lifeline reimbursement until the subscriber personally activates its service.³⁴ The flow-charts in Attachments B-1 and B-2 provide more detail on the certification process using both internal sales agents and third-party dealers.

Annual Re-Certification

Birch's systems are capable of tracking and flagging the anniversary of a Lifeline customer's start date. Birch plans to utilize this anniversary date to ensure its Lifeline customers re-certify their eligibility to participate in the Lifeline program once a year. Birch will utilize state-level databases or the national database to the extent available to re-certify customers. Until that time, Birch plans to contact its prepaid wireless Lifeline customers via written notification, and is exploring the ability to utilize text messaging, automated voicemail, and TPV

³³ *Lifeline Reform Order* ¶ 260.

³⁴ *Lifeline Reform Order* ¶ 257.

re-certification procedures. Any customers that do not re-certify within the 30-day window will be de-enrolled from Birch's prepaid wireless Lifeline service within five (5) business days after the expiration of the subscriber's time to respond to Birch's re-certification efforts as required by Commission's rules, which is explained in more detail below.³⁵ Birch will retain any TPV recordings, paper forms, copies of text message, or other documentation for re-certification for at least five (5) years. The flow-chart in Attachment B-3 provides more detail on the annual re-certification process.

(3) A detailed explanation of how the carrier will comply with the forbearance conditions relating to public safety and 911/E-911 access.

Birch's prepaid wireless Lifeline service offering will comply with the 911 requirements outlined in the *Lifeline Reform Order* necessary for application of conditional forbearance. Birch will provide its prepaid wireless Lifeline subscribers with 911 and E911 access regardless of activation status and availability of minutes. Birch will also provide its Lifeline subscribers with E911-compliant handsets and replace, at no additional charge to the subscriber, any non-compliant handset. Birch will rely on its contractual arrangement with Sprint to provide 911 and E911 services to consumers, as well as obtain the handsets to be provided to consumers.³⁶ Birch's MVNO arrangement with Sprint specifically addresses 911/E911 services and requires Sprint to supply handsets that satisfy all Commission requirements.

³⁵ 47 C.F.R. § 54.405(e)(4).

³⁶ Birch understands that it has an independent obligation to provide 911 and E911 services as a wireless reseller, and will utilize its underlying contractual arrangement with Sprint to meet that obligation. *See, e.g.*, 47 C.F.R. § 20.18(m); *Lifeline Reform Order* at n.989.

(4) A detailed explanation of how the carrier will comply with the Commission’s marketing and disclosure requirements for participation in the Lifeline program;

Birch will publicize the availability of its prepaid wireless Lifeline service offering in a manner reasonably designed to reach those likely to qualify the service.³⁷ Birch will utilize the Commission’s 2004 outreach guidelines for advertising its prepaid wireless Lifeline service offering.³⁸ Specifically, Birch will utilize outreach materials and methods designed to reach households that currently do not have telephone service, will develop advertising materials for non-English speaking populations within its service area, and will coordinate its outreach efforts with relevant government agencies. As required under the *Lifeline Reform Order*, Birch will ensure the Commission-required disclosures, any DBA names it uses, and details of the prepaid wireless Lifeline service offering are contained in all marketing materials.³⁹

Birch’s advertising strategy for its prepaid wireless Lifeline service offering will build on its expertise in advertising its wireline Lifeline product currently offered as a non-ETC reseller. Birch understands that its ability to provide wireline Lifeline services as a non-ETC reseller may be limited in the future. As part of its marketing efforts for its prepaid wireless Lifeline service, Birch will market to those consumers currently taking its wireline Lifeline product, but will ensure that the consumer receives only one Lifeline service in accordance with the Commission’s one-per-household rules.

Birch’s advertising for its prepaid wireless Lifeline service offering will include, but not be limited to, targeted direct mail, advertisements in daily and weekly print periodicals, billboards, event sponsorship, bus advertising, radio advertising, and online search engines. Birch will also engage in outbound calling campaigns (consistent with applicable telemarketing

³⁷ 47 C.F.R. § 54.405(b).

³⁸ *Lifeline and Link Up*, 19 FCC Rcd 8302, ¶¶ 45-48 (2004).

³⁹ *Lifeline Reform Order* ¶¶ 274-282.

regulations). Birch will obtain marketing calling lists through various marketing activities, which may include, but not be limited to interest forms completed by prospective customers who have attended a marketing event and have provided their phone number indicating their interest in being contacted. Birch also plans to target its current wireline Lifeline customers (served by Birch as a non-ETC reseller) to determine interest in converting from wireline Lifeline service to wireless Lifeline service. Birch will also consider purchasing prospective customer lists for outbound calling campaigns once the company has determined such lists effectively target potential Lifeline customers and adhere to all applicable telemarketing regulations. Once Birch has a list of prospective customer to contact, Birch marketing personnel will deliver a marketing message that accurately and in detail describes the benefits of the Lifeline program, how the Lifeline program works, and eligibility requirements to qualify as a Lifeline customer, including a determination of whether the prospective customer is already receiving a Lifeline service (duplicative service check). If the prospective customer appears initially qualify, the outbound marketing call will initiate the completion of the Birch Lifeline Enrollment Form and receipt program eligibility documents to be reviewed by Birch personnel.

Birch will also coordinate with relevant state agencies, community outreach organizations, and non-profit organizations to make information available regarding Birch's prepaid wireless Lifeline service offering in resource guides and other printed materials produced by those organizations, as well as in their offices or other locations visited by potential Lifeline-eligible subscribers. Birch has existing relationships with these organizations in connection with its current wireline Lifeline service offering. Birch will pro-actively market its prepaid wireless Lifeline services through state, county, municipal and non-profit community action agencies, associations and networks. These agencies support Lifeline eligible individuals and families in

obtaining support services, employment, employment training, life skills training and other services. Birch will have marketing personnel dedicated to building strong relationships with these agencies - and formulate marketing programs that support the missions of these agencies. Birch will raise awareness of Birch Lifeline services through the inclusion of Birch Lifeline information in resource guides and other support materials (online and in printed materials issued by the agency) that are provided to Lifeline-eligible prospective customers. Birch will also pursue referral arrangements and partnerships where a non-profit non-governmental agency can specifically refer Lifeline-eligible customers directly to Birch in exchange for minimal compensation or other remuneration to the agency for the referral. Birch will also raise awareness of its Lifeline services through sponsoring events held by these agencies.

(5) A detailed explanation of the carrier’s procedures and efforts to prevent waste, fraud and abuse in connection with Lifeline funds, including but not limited to, procedures the carrier has in place to prevent duplicate Lifeline subsidies within its own subscriber base, procedures the carrier undertakes to de-enroll subscribers receiving more than one Lifeline subsidy per household, information regarding the carrier’s toll limitation service, if applicable, and the carrier’s non-usage policy, if applicable.

Prior to enrolling a Lifeline customer, Birch will take two steps to prevent duplicate Lifeline subsidies within its own subscriber base. First, Birch will review its own service records to ensure the potential customer is not currently receiving a Lifeline service from Birch. Second, Birch will utilize available state-level databases and the national database to be created to ensure the potential customer is not currently receiving a Lifeline service from any other carrier. Birch will promptly investigate any notification it receives from a state, the Commission, or USAC that one of its Lifeline customers is improperly receiving service. Birch will also update any required databases within one (1) business day of de-enrolling a consumer.⁴⁰ The flow-chart set forth in Attachment B-4 provides additional detail on the de-enrollment process described herein.

⁴⁰ *Lifeline Reform Order* ¶ 257.

De-enrollment for failure to re-certify. Birch will also re-check its internal databases and available state-level or federal databases as part of its annual re-certification process. Birch will issue a letter separate from the invoice to all subscribers, requesting them to recertify and noticing the subscriber that failure to respond within 30 days will trigger de-enrollment. The subscriber will be given the option to mail or fax back the re-certification form. The subscriber will also be given the option to complete their recertification form online, over the phone with TPV, or by mail. If the subscriber fails to respond with their completed form and documentation of eligibility by the 30th day of the notice period, Birch will de-enroll the customer by taking the following steps: Birch will place a Local Service Request (“LSR”) with the supporting local exchange carrier to remove the Lifeline USOC to prevent further credits; remove the credit supplied by Birch to the end user from the billing system; and the credit may only be reapplied if customer goes through certification process again. The flow-chart in Attachment B-3 provides more detail on the annual re-certification process.

De-enrollment for duplicative support. Birch understands that duplicative claims are wasteful and burden the fund, and will take all necessary steps to swiftly de-enroll consumers found to be receiving duplicative federal Lifeline discounts. Upon notification from the Commission, a state, or USAC that a subscriber is receiving Lifeline service from another carrier, or more than one member of a household is receiving Lifeline service, Birch will de-enroll the subscriber within five business days.⁴¹ To the extent de-enrollment is necessary due to duplicative support, Birch will take the following steps to de-enroll a customer: Birch will immediately place a LSR with the supporting local exchange carrier to remove the Lifeline USOC to prevent further credits; remove the credit supplied by Birch to the end user from the

⁴¹ 47 C.F.R. § 54.405(e)(2); see also *Lifeline and Link Up Reform and Modernization*, 26 FCC Rcd 9022, ¶ 15 (2011).

billing system; and have a company policy in place that the credit may only be reapplied if the customer goes through certification process again. Birch will not seek reimbursement for any de-enrolled subscriber following the date of that subscriber's de-enrollment.

De-enrollment for non-usage. As part of its de-enrollment procedures, Birch will comply with the Commission's 60-day non-usage policy. Specifically, Birch will not consider a consumer to be enrolled, and Birch will not seek reimbursement for that consumer, until the consumer activates its service in the first instance.⁴² Further, Birch will de-enroll and not seek reimbursement for any consumer whose service is inactive for a consecutive 60-day period.⁴³ Birch will define "usage" consistent with Commission rules. Specifically, the following activities will constitute "usage" of Birch's prepaid wireless Lifeline service: (1) completion of an outbound call; (2) purchase of minutes to add to the subscriber's service plan; (3) answer of an incoming call from a party other than Birch or its representative; and (4) response to direct contact from Birch and confirmation that the consumer seeks to continue receiving the Lifeline service.⁴⁴ Birch will run usage reports for each customer to determine non-usage over a period of 60 consecutive days. Despite a consumer's "usage" as defined herein and in the Commission's rules, Birch will continue to comply with its existing public safety obligations to transmit all wireless 911 calls regardless of subscriber inactivity even if Birch is no longer providing Lifeline service to that consumer.⁴⁵

When a customer has been identified for de-enrollment for non-usage, a letter will be sent to the customer, and the customer will have 30 days to respond. Birch will allow 15 calendar

⁴² 47 C.F.R. § 54.404(b)(10).

⁴³ *Lifeline Reform Order* ¶ 257.

⁴⁴ 47 C.F.R. § 54.407(c)(2); *Lifeline Reform Order* ¶ 261.

⁴⁵ *Lifeline Reform Order* ¶ 262.

days for mail delivery and handling, and a 30-day notice period thereafter. Birch will run usage monitoring reports on the customers who have been noticed and de-enroll the customer if usage is not reflected on their account by the 30th day. On the 31st day, Birch will de-enroll the customer by placing a LSR with the supporting local exchange carrier to remove the Lifeline USOC to prevent further credits and remove the credit supplied by Birch to the end user from the billing system. The flow-chart set forth in Attachment B-5 provides more information on the process for de-enrollment for non-usage.

CONCLUSION

WHEREFORE, for the forgoing reasons, Birch respectfully requests that the Commission expeditiously approve its further amended Compliance Plan and designate it as an ETC for the provision of prepaid wireless Lifeline services in the states of Alabama, Florida, North Carolina, and Tennessee.

Respectfully submitted,

BIRCH COMMUNICATIONS, INC.



Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8930 (telephone)
866-255-0185 (facsimile)
acollins@cgrdc.com

Christopher J. Bunce
Vice President, Legal and General
Counsel
Birch Communications, Inc.
2300 Main Street, Suite 340
Kansas City, MO 64108
816-300-3000 (telephone)
chris.bunce@birch.com

Dated: June 29, 2012

Its Attorneys

Attachment A to Compliance Plan

Draft Enrollment and Certification Form



Lifeline Enrollment Form

Three Easy Steps to Complete:

Step #1 – Complete Lifeline Enrollment Form on page 2

(And if needed Household Worksheet on page 5)

Step #2 – Locate your Lifeline benefit documentation

(More info on your required documentation on pages 3 and 4)

Step #3 – Send complete enrollment form and benefit documentation to NOW Communications

(There are many convenient ways to send them, check Page 2)



Lifeline Enrollment Form

This signed application is required to enroll you in the Lifeline program in your state. This application is only for the purpose of verifying your participation in these programs and will not be used for any other purpose.

Things to know about the Lifeline Program:

- Lifeline is a Federal benefit that is not transferrable to any other person;
- Lifeline service is available for only one line per household. A household cannot receive benefits from multiple providers;
- A household is defined, for purposes of the Lifeline program, as any individual or group of individuals living at the same address that share income and expenses; and,
- Violation of the one-per household rule is not permitted under federal rules and will result in the subscriber's de-enrollment from the program and possible criminal prosecution by the U.S. Government.

First Name: _____ MI: _____ Last Name: _____ Date of Birth: _____

Last Four Digits of Social Security Number: _____ Contact Telephone Number: _____

Residential Address:

Must be a street address (not a P.O. Box) and your principal residence.

Address Line 1: _____

Address Line 2: _____

City, State and Zip: _____

Billing Address:

May contain a P.O. Box.

☐ Check here if the billing address is the same as the residential address.

Address Line 1: _____

Address Line 2: _____

City, State and Zip: _____

This Address Is: ☐ Permanent ☐ Temporary *(If temporary, your address must be certified or updated every 90 days.)*

☐ A shared, multi-household residence →
(Complete Household Worksheet)

(Initial)

If shared, multi-household residence, I hereby certify that other household adults do not contribute income and/or share expenses in my household. *Complete Household Worksheet.*

_____ I hereby certify that I qualify to participate in at least one of the following programs *(check all that apply)*:

(Initial) *Please see the related documentation requirements on the reverse side.*

☐ Supplemental Nutrition Assistance Program (SNAP) formerly known as Food Stamps ☐ Supplemental Security Income (SSI)

☐ Federal Public Housing Assistance (FPHA) or Section 8 ☐ Low Income Home Energy Assistance Program (LIHEAP)

☐ National School Lunch Program's free lunch program ☐ Temporary Assistance for Needy Families (TANF) ☐ Medicaid

_____ I hereby certify that my household income is at or below 135% of the Federal Poverty Guidelines; there are _____ members in my household.

(initial) *Please see the Federal Poverty Guidelines and the related documentation requirements on the reverse side.*

I certify, under penalty of perjury: Initial by Each Certification

The information provided in this application is true and correct to the best of my knowledge; I acknowledge that willfully providing false or fraudulent information in order to receive Lifeline service is punishable by fine or imprisonment, termination of all Lifeline benefits, and being barred from participating in the Lifeline program.

_____ I acknowledge that non-usage over a consecutive 60-day period will result in my de-enrollment from this Lifeline service.

_____ I am eligible for Lifeline service through participation in the qualifying program(s) or meeting the income requirements as identified above.

_____ I have provided documentation of eligibility for Lifeline service, unless otherwise specifically exempted from providing such documentation.

I will inform NOW within 30 days of any potential change in eligibility, including, but not limited to: (i) a move or change of address; (ii) any change in participation in the programs identified above or change in income or household members; (iii) receiving Lifeline service from another provider; or (iv) any other change that would affect my eligibility for Lifeline service. If I fail to inform NOW of any of these changes, I understand under penalty of perjury, I may be subject to penalties.

_____ I have provided the address where I currently reside and, if a temporary address has been provided, then I acknowledge that NOW will attempt to verify my address every 90 days, and, if I do not respond to verification attempts within 30 days, then I may be de-enrolled from my Lifeline benefits.

_____ My household will receive only one Lifeline benefit and, to the best of my knowledge, no one in my household is currently receiving Lifeline service from any other provider.

_____ I acknowledge that I will be required to annually re-certify eligibility and may be required to re-certify continued eligibility for Lifeline at any time and failure to re-certify will result in the termination of Lifeline benefits or other penalties.

_____ I authorize NOW and its agents to access any records (including financial records) required to verify my statements herein and to confirm my eligibility for Lifeline service. I authorize government agencies and their authorized representatives to discuss with and/or provide information to NOW and its agents verifying my participation in public assistance programs that qualify me for Lifeline service.

_____ I acknowledge and consent to my name, telephone number, and address being divulged to the Universal Service Administrative Company (USAC) (the administrator of the program) and/or its agents for the purpose of verifying that I, as a subscriber, do not receive more than one Lifeline benefit. In the event that USAC identifies that I am receiving more than one Lifeline subsidy for my household, all carriers involved may be notified so that I may select one service and be de-enrolled from the other.

APPLICANT SIGNATURE/TPV ID: _____

DATE: _____

FOR NOW COMMUNICATIONS OFFICE USE ONLY

Company Representative Name: _____ ☐ Database Queried? Date: ____/____/____ Database Name: _____

☐ ETC Eligibility Review Confirmation Type: ☐ Written, attached ☐ Screenshot, attached ☐ ETC employee

Type of Documentation reviewed: _____ ☐ State Agency Queried? Date: ____/____/____ Agency Name: _____

Type of media: _____ How received: _____ Agency contact: _____ Confirmation Type: ☐ Notice, attached

Date/Expiration Date of Documentation: ____/____/____

Identity of Documentation: _____

Date reviewed: ____/____/____

☐ Applicant name different than name on documentation (Note: _____)

Name: _____

_____ Certification that individual is part of applicant's household

_____ Certification that individual does not already receive Lifeline

Representative Signature: _____ Date: _____

NOTES : _____

HOW TO SUBMIT YOUR ENROLLMENT APPLICATION:

COMPLETE ENROLLMENT APPLICATION ONLINE: www.nowcommunications.com FAX: (877) 465-0545 EMAIL: nowcommunications@birch.com
POSTAL MAIL : NOW Communications, 2300 Main St., Suite 340, Kansas City, MO 64108.

HOW TO SUBMIT YOUR DOCUMENTATION:

TEXT A DOCUMENT: (816) 446-3388 FAX: (877) 465-0545 EMAIL: nowcommunications@birch.com POSTAL MAIL: NOW Communications, 2300 Main St., Suite 340, Kansas City, MO 64108.

DOCUMENTATION REQUIREMENTS

**You are required to provide proof of your participation in the programs you identified
OR proof of your qualifying income.**

PROGRAM ELIGIBILITY

If, on page 1 of this form, you indicated you were in a qualifying program. You must provide documentation to prove receipt of benefits under these programs to NOW Communications. Upon examination by NOW Communications, any copies, photos or faxes of your documentation will be destroyed or returned to you at your request. Acceptable forms of documentation are described below:

Public Housing Assistance (FPHA) or Section 8

There are two types of documentation that can prove receipt of benefits under the Public Housing Assistance (FPHA), or Section 8, Program. **First**, an applicant can provide an award letter. A recipient of Public Housing Assistance (FPHA), or Section 8, receives an award letter from his or her local Public Housing Agency (PHA). The award letter should include the following information: name of program, date of award, name of beneficiary and award amount.

Second, an applicant can provide either a [Public Housing Assistance Lease Agreement](#)  or a Section 8 Voucher. These items should clearly reflect the type of Public Housing Assistance credit issued.

If the beneficiary does not have an award letter, lease agreement, or voucher, the applicant can contact the agency that approved the application and request formal documentation of his or her award. To find contact information for a local Public Housing Agency, please visit the U.S. Department of Housing and Urban Development's [state contact and agency listing](#).

The beneficiary named on the FPHA documentation may be a member of the Lifeline applicant's household, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, NOW Communications must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

Low Income Home Energy Assistance Program (LIHEAP)

Because the Low Income Home Energy Assistance Program (LIHEAP) is administered by a wide range of local agencies, the program's name may vary by state (note that most include the words "energy assistance program" in the name).

There are two types of documentation applicants can provide to demonstrate receipt of LIHEAP benefits.

First, a LIHEAP participant might have an award letter from a state agency. The award letter will include the following: name of program, date of award, name of beneficiary and award amount. In some instances, if the beneficiary received notification of his or her approval in-person, the awardee might not have a formal award letter and will need to contact the state agency that approved the application to request a formal award letter.

Second, a LIHEAP participant can provide a utility bill that reflects the Housing Assistance credit. The utility bill should clearly reflect inclusion of an Energy Assistance credit.

The beneficiary named on the LIHEAP documentation may be a member of the Lifeline applicant's household, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

To find contact information for a local LIHEAP agency, please visit the Low Income Home Energy Assistance Program's [state contact and agency listing](#).

National School Lunch Program's Free Lunch Program (NSLP)

Although the National School Lunch Program's Free Lunch Program (NSLP) is a federally assisted program, award letters are provided by state agencies and, thus, will vary by locality. All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary and date of award.

The beneficiary named on the NSLP documentation may be a dependent of the Lifeline applicant, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

Supplemental Security Income (SSI)


Participation in the federal portion of SSI is an eligibility criterion for Lifeline. Some states offer state supplements to the federal SSI program, but receipt of benefits from the state supplement, but not federal SSI, does not qualify an individual for Lifeline. All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary, date of award and award amount. A benefit check stub from the Social Security Administration may also be submitted as proof of participation, if the check stub clearly states the date and name of the beneficiary.

The beneficiary named on the SSI documentation may be a dependent of the Lifeline applicant, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

Temporary Assistance for Needy Families (TANF)

All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary and date of award.

The beneficiary named on the TANF documentation may be a member of the Lifeline applicant's household, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

In some states, TANF might be more commonly referred to by a different name. Look for your state on this list of [TANF program names by state](#) .

Supplemental Nutrition Assistance Program (SNAP)

The Supplemental Nutrition Assistance Program (SNAP) was previously known as Food Stamps. Beneficiary cards and award letters may vary because SNAP is administered on a state level. Because not all beneficiary cards include the recipient's name, it is recommended that an award letter from the local state agency be used for Lifeline verification purposes. All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary and date of award.

The beneficiary named on the SNAP documentation may be a member of the Lifeline applicant's household, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

In some states, SNAP might be more commonly referred to by a different name. Look for your state on this list of [SNAP program names by state](#) .

Medicaid

Each state provides its own unique Medicaid card to beneficiaries. However, most cards should clearly state the following: name of program, name of beneficiary, state of residence, issued or effective date and the name of the state agency that provided the card.

The beneficiary named on the Medicaid documentation may be a dependent of the Lifeline applicant, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

Some states have different names for their Medicaid programs. Look for your state on this list of [Medicaid program names by state](#) .

PROGRAM ELIGIBILITY

An applicant may be eligible for Lifeline if he or she has a household income at or below 135% of the Federal Poverty Guidelines. Below are the acceptable types of documentation:

- The prior year's state, federal, or Tribal tax return
- A current income statement from an employer or paycheck stub
- A Social Security statement of benefits
- A Veterans Administration statement of benefits
- A retirement or pension statement of benefits
- An Unemployment or Workers' Compensation statement of benefits
- A federal or Tribal notice letter of participation in General Assistance
- A divorce decree, child support award, or other official document containing income information
- If the documentation relied on does not cover a full year, such as a

135% FEDERAL POVERTY GUIDELINES - 2012	
Members of Household	Household Income must be at or below
1	\$ 15,080
2	\$ 20,426
3	\$ 25,772
4	\$ 31,118
5	\$ 36,464
6	\$ 41,810
7	\$ 47,156
8	\$52,502
For every additional member of your household, add \$4,950.	



Optional Lifeline Household Worksheet

Complete only if you checked "A shared, multi-household residence" on your enrollment form

Name	
Address	
Telephone Number	

Lifeline is a government program that provides a monthly discount on home or mobile telephone services. Only ONE Lifeline discount is allowed per household. Members of a household are not permitted to receive Lifeline service from multiple telephone companies.

Your **household** is everyone who lives together at your address as one economic unit (including children and people who are not related to you).

The **adults** you live with are part of your **economic unit** if they contribute to and share in the income and expenses of the household. An **adult** is any person 18 years of age or older, or an emancipated minor (a person under age 18 who is legally considered to be an adult). Household **expenses** include food, health care expenses (such as medical bills) and the cost of renting or paying a mortgage on your place of residence (a house or apartment, for example) and utilities (including water, heat and electricity). **Income** includes salary, public assistance benefits, social security payments, pensions, unemployment compensation, veteran's benefits, inheritances, alimony, child support payments, worker's compensation benefits, gifts, and lottery winnings.

Spouses and domestic partners are considered to be part of the same household. Children under the age of 18 living with their parents or guardians are considered to be part of the same household as their parents or guardians. If an adult has no income, or minimal income, and lives with someone who provides financial support to that adult, both people are considered part of the same household.

You have been asked to complete this Worksheet because someone else currently receives a Lifeline-supported service at your address. This other person may or may not be a part of your household. Answer the questions below to determine whether there is more than one household residing at your address.

1. Does your spouse or domestic partner (that is, someone you are married to or in a relationship with) already receive a Lifeline-discounted phone? (check no if you do not have a spouse or partner) ____YES ____NO
 - If you checked **YES**, you may not sign up for Lifeline because someone in your household already receives Lifeline. Only ONE Lifeline discount is allowed per household.
 - If you checked **NO**, please answer question #2.
2. Other than a spouse or partner, do other adults (people over the age of 18 or emancipated minors) live with you at your address?
 - A. A parent ____YES ____NO
 - B. An adult son or daughter ____YES ____NO
 - C. Another adult relative (such as a sibling, aunt, cousin, grandparent, grandchild, etc.) ____YES ____NO
 - D. An adult roommate ____YES ____NO
 - E. Other ____YES ____NO
 - If you checked **NO** for each statement above, you do not need to answer the remaining questions. Please initial line B, below, and sign and date the worksheet.
 - If you checked **YES**, please answer question #3.
3. Do you share living expenses (bills, food, etc.) and share income (either your income, the other person's income or both incomes together) with at least one of the adults listed above in question #2? ____YES ____NO
 - If you checked **NO**, then your address includes **more than one household**. Please initial lines A and B below, and sign and date the worksheet.
 - If you checked **YES**, then your address includes only **one household**. You may not sign up for Lifeline because someone in your household already receives Lifeline.

CERTIFICATION

Please initial the certifications below and sign and date this worksheet. Submit this worksheet to NOW Communications along with your Lifeline application.

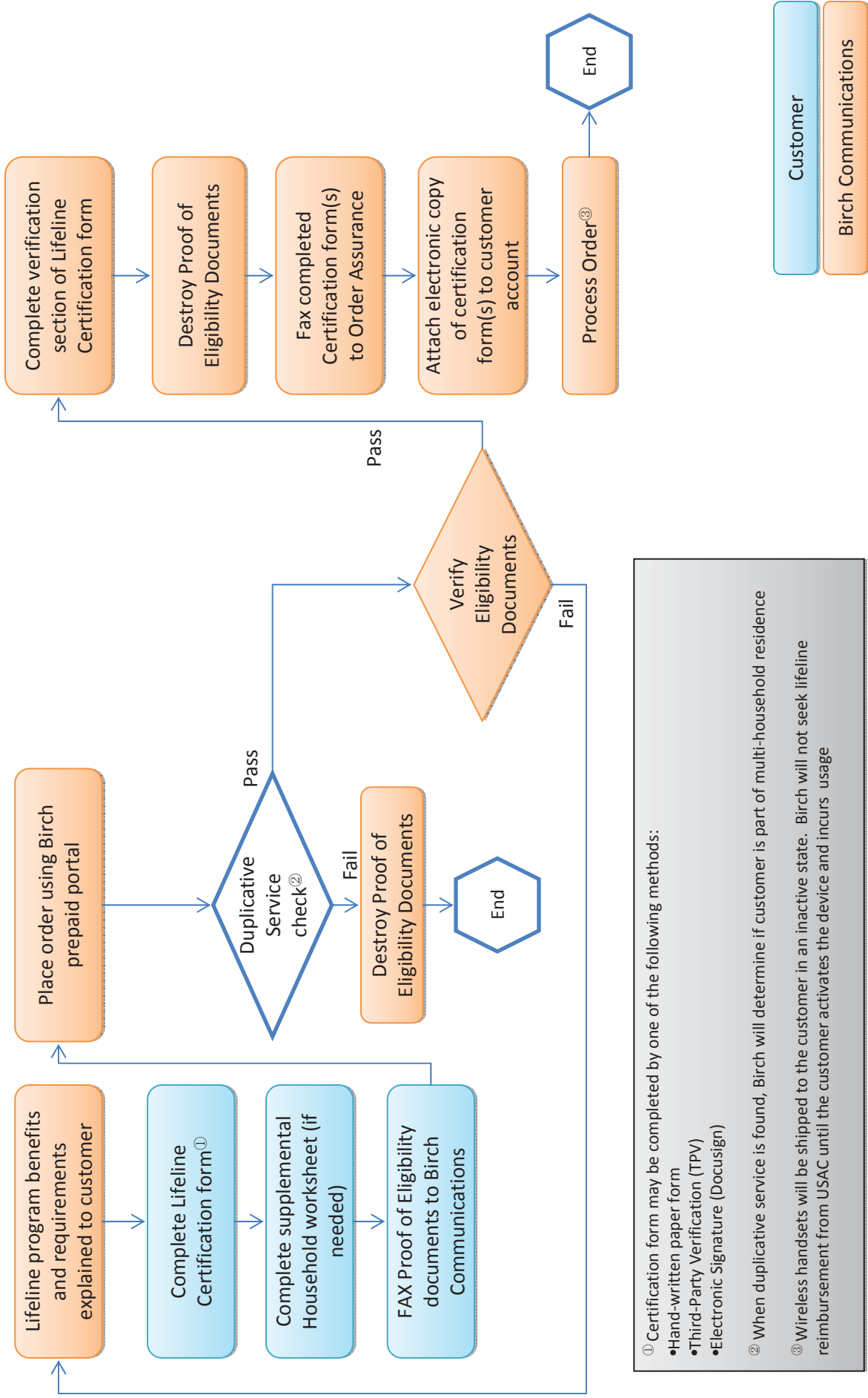
- A. ____ I certify that I live at an address occupied by multiple households.
- B. ____ I understand that violation of the one-per-household requirement is against the Federal Communication Commission's rules and may result in me losing my Lifeline benefits, and potentially, prosecution by the United States government.

Signature _____ Date _____

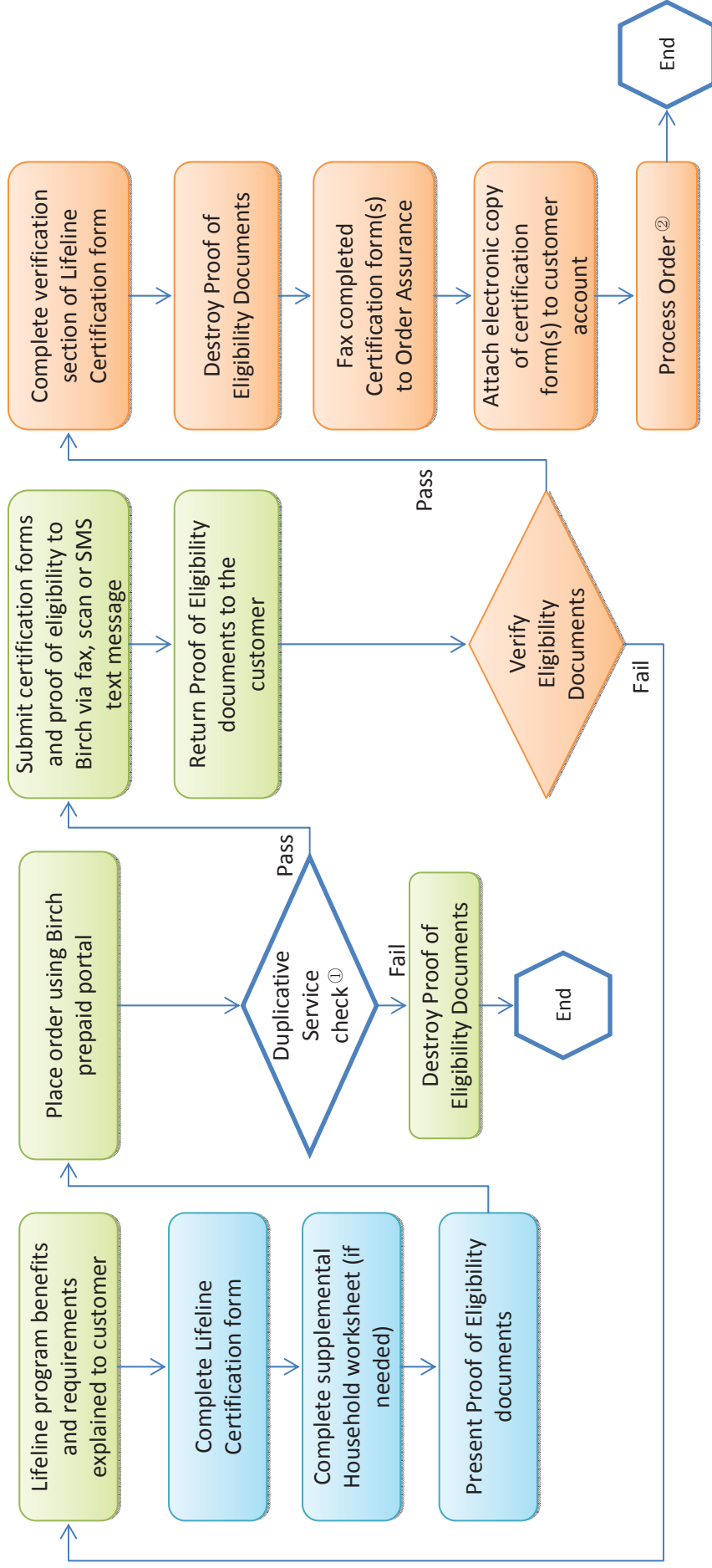
Attachment B **to** **Compliance Plan**

Flow-Charts Depicting Birch Internal
Processes for Lifeline Compliance

Lifeline Certification process – Internal Sales Agents



Lifeline Certification process – Authorized Dealers



① When duplicative service is found, Birch will determine if customer is part of multi-household residence

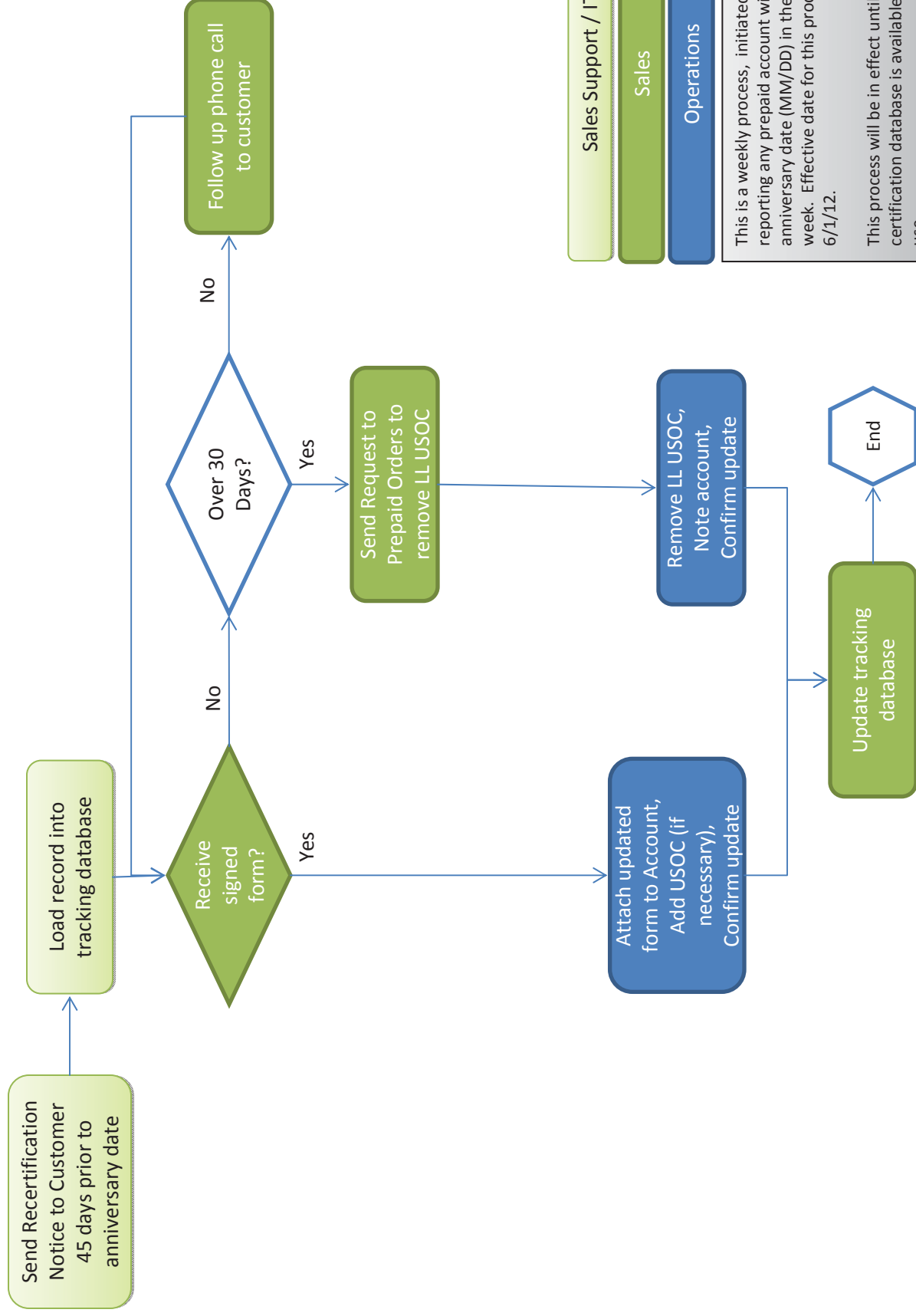
② Wireless handsets will be shipped to the customer in an inactive state. Birch will not seek lifeline reimbursement from USAC until the customer activates the device and incurs usage

Birch Authorized Dealer

Customer

Birch Communications

Annual Lifeline Re-Certification



Sales Support / IT

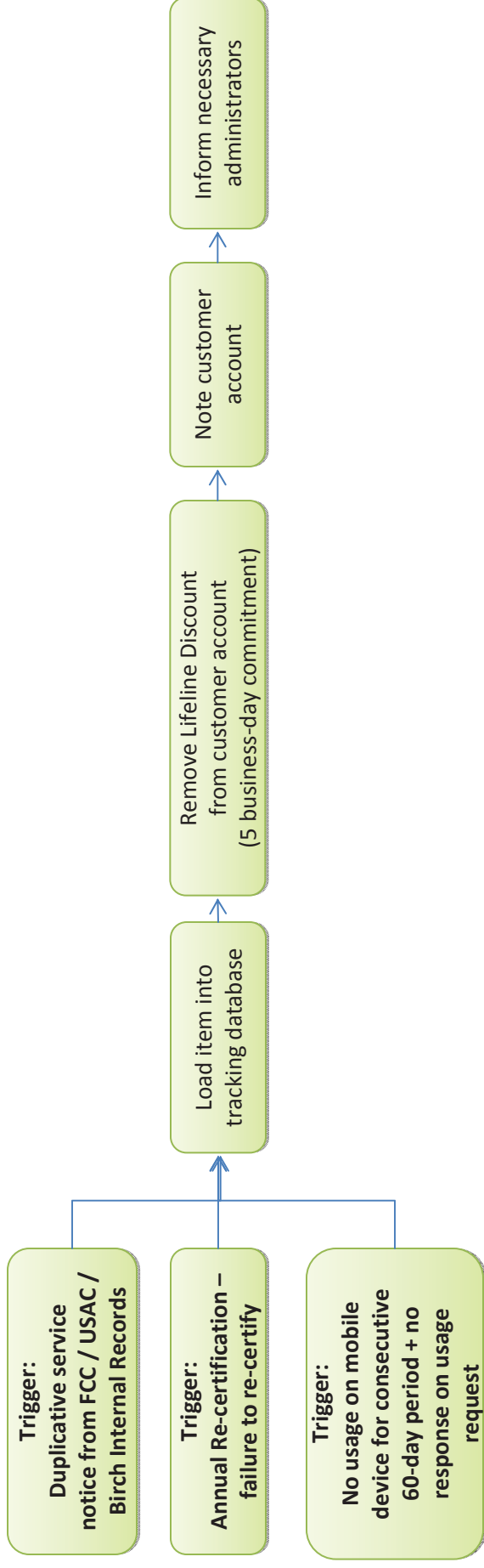
Sales

Operations

This is a weekly process, initiated by reporting any prepaid account with an anniversary date (MM/DD) in the previous week. Effective date for this process is 6/1/12.

This process will be in effect until the national certification database is available and is in use.

Lifeline De-enrollment Scenarios



- De-enrollment in Lifeline program will remove the customer from any USAC filings for reimbursement of the lifeline discount amount.
- All wireless handsets, regardless of activation status, will retain the capability of dialing and reaching emergency-911

Non-Usage notification

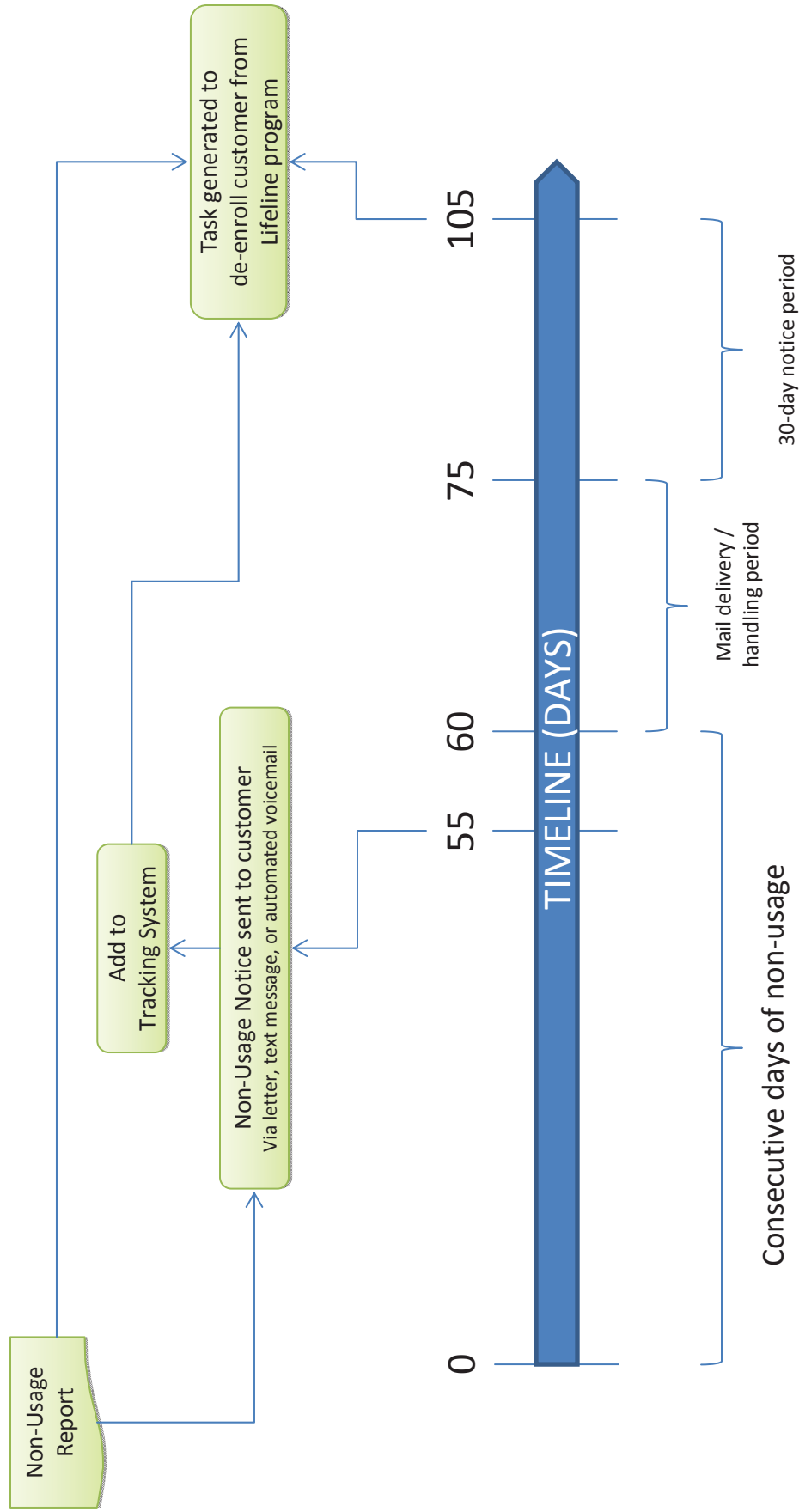


EXHIBIT 2

State Commission Statements regarding Jurisdiction for Wireless ETC Designation

Alabama Public Service Commission

Orders

PINE BELT CELLULAR, INC. and PINE BELT PCS, INC.,

Joint Petitioners

PETITION: For ETC status and/or clarification regarding the jurisdiction of the Commission to grant ETC status to wireless carriers.

DOCKET U-4400

ORDER

BY THE COMMISSION:

In a joint pleading submitted on September 11, 2001, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. (collectively referred to as "Pine Belt") each notified the Commission of their desire to be designated as universal service eligible telecommunications carriers ("ETCs") for purposes of providing wireless ETC service in certain of the non-rural Alabama wireline service territories of BellSouth Telecommunications, Inc. ("BellSouth") and Verizon South, Inc. ("Verizon"). The Pine Belt companies noted their affiliation with Pine Belt Telephone Company, a provider of wireline telephone service in rural Alabama, but clarified that they exclusively provide cellular telecommunications and personal communications (collectively referred to as "CMRS" or "wireless") services in their respective service areas in Alabama in accordance with licenses granted by the Federal Communications Commission ("FCC"). The pivotal issue raised in the joint pleading of Pine Belt companies is whether the Commission will assert jurisdiction in this matter given the wireless status of the Pine Belt companies.

As noted in the filing of the Pine Belt companies, state Commissions have primary responsibility for the designation of eligible telecommunications carriers in their respective jurisdictions for universal service purposes pursuant to 47 USC §214 (e). The Commission indeed established guidelines and requirements for attaining ETC status in this jurisdiction pursuant to notice issued on October 31, 1997.

For carriers not subject to state jurisdiction, however, §214(e)(6) of the Telecommunications Act of 1996 provides that the FCC shall, upon request, designate such carriers as ETCs in non-rural service territories if said carriers meet the requirements of §214(e)(1). In an FCC Public Notice released December 29, 1997 (FCC 97-419) entitled "Procedures for FCC designation of Eligible Telecommunications Carriers pursuant to §214(e)(6) of the Telecommunications Act", the FCC required each applicant seeking ETC designation from the FCC to provide, among other things, "a certification and brief statement of supporting facts demonstrating that the Petitioner is not subject to the jurisdiction of a state Commission."

The Pine Belt companies enclosed with their joint pleading completed ETC application forms as developed by the Commission. In the event the Commission determines that it does not have jurisdiction to act on the Pine Belt request for ETC status, however, the Pine Belt companies seek an affirmative written statement from the Commission indicating that the Commission lacks jurisdiction to grant them ETC status as wireless carriers.

The issue concerning the APSC's jurisdiction over providers of cellular services, broadband personal communications services, and commercial mobile radio services is one that was rather recently addressed by the Commission. The Commission indeed issued a Declaratory Ruling on March 2, 2000, in Docket 26414 which concluded that as the result of certain amendments to the Code of Alabama, 1975 §40-21-120(2) and (1)(a) effectuated in June of 1999, the APSC has no authority to regulate, *in any respect*, cellular services, broadband personal communications services and commercial mobile radio services in Alabama. Given the aforementioned conclusions by the Commission, it seems rather clear that the Commission has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction. The Pine Belt companies and all other wireless providers seeking ETC status should pursue their ETC designation request with the FCC as provided by 47 USC §214(e)(6).

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission's jurisdiction to grant Eligible Telecommunications Carrier status for universal service purposes does not extend to providers of cellular services, broadband personal communications services, and commercial mobile radio services. Providers of such services seeking Eligible Telecommunications Carrier status should accordingly pursue their requests through the Federal Communications Commission.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 12th day of March, 2002.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary

Press the Back Arrow to Return to the Search

Return to PSC Home - <http://www.psc.state.al.us/index.htm>



STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL

May 25, 2012

In reply please refer to:
UR:Undocketed:PAP

John J. Heitmann
Joshua T. Guyan
Kelley Drye & Warren LLP
Washington Harbour, Suite 400
3050 K Street, NW
Washington, D.C. 20007-5108

Re: Request for a Letter Confirming Lack of Jurisdiction Over Wireless Eligible
Telecommunications Carrier Petitions

Dear Messrs Heitmann and Guyan:

The Public Utilities Regulatory Authority (Authority) is in receipt of your March 28, 2012 letter concerning the Authority's jurisdiction over wireless mobile carrier services' rates and charges.

The Authority does not regulate or license wireless carrier services' rates and charges per the Federal Omnibus Budget Act of 1993. Therefore, all applications for eligible telecommunications carriers' status for wireless providers should be made to the Federal Communications Commission.

Sincerely,

DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION
PUBLIC UTILITIES REGULATORY AUTHORITY

Kimberley J. Santopietro
Executive Secretary

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
VERIZON DELAWARE INC., TO MODIFY THE)
LIFELINE SERVICE BY ADDING AN INCOME) PSC DOCKET NO. 05-016T
QUALIFIER TO THE ELIGIBILITY CRITERIA)
(FILED JUNE 17, 2005))

ORDER NO. 6736

This 11th day of October, 2005, the Commission determines and Orders the following:

1. In the jargon of the federal Lifeline/Link-Up program, Delaware is a "federal default State." Delaware has never, by either state law or state regulation, ordained, nor funded, a stand-alone program to provide discounts on basic telephone services charges for low-income subscribers. Consequently, it was not until 1997, when the Federal Communications Commission ("FCC") revamped the federal Lifeline/Link-Up program, that Delaware subscribers first became eligible for participation in the federal Lifeline program.¹ And given that in a "federal default State" only federally-raised monies are used to reimburse eligible carriers for the Lifeline and Link-Up discounts, it is the FCC, and not the state commission, that gets to call the tune about who should be eligible to receive these federally-subsidized price reductions.

2. Since 1997, Verizon Delaware Inc. ("VZ-DE") has been designated as an "eligible telecommunications carrier" and has offered

¹See PSC Order No. 4684 (Dec. 16, 1997) (summarizing Delaware history and electing to allow "Tier 2" federal support to eligible Delaware subscribers).

federal Lifeline discounts on the federal list of supported services.² And even though in "default" States, Lifeline is almost an exclusively federal program, VZ-DE has, since 1997, filed at the State level, tariff provisions setting forth its Lifeline offerings.³

3. In 2004, the FCC changed some of the "eligibility" rules describing which subscribers may participate in the federal Lifeline/Link-Up program.⁴ In particular, the 2004 amendments added additional programs to the list of "eligible" programs where participation confers federal default Lifeline/Link-Up eligibility.⁵ The 2004 amendments also introduced an additional eligibility criteria premised on the subscriber's household income.⁶ Eligible telecommunications carriers, such as VZ-DE, were given one year to implement this new, additional income-based eligibility criteria.⁷

4. To implement these changes prescribed by the FCC, VZ-DE initially filed revisions to the Lifeline and Link-Up portions of its

²See PSC Order No. 4680 (Dec. 17, 1997) ("ETC" designation for VZ-DE). See also PSC Dckt. No. 97-023T (initial Lifeline tariff filing by VZ-DE).

³From December 2000 through December 2003, VZ-DE offered, under its state tariff, an "expanded" Lifeline program for Delaware. The discounts under such program exceeded the Tiers 1 & 2 levels normally available in a default State. VZ-DE offered this expanded program to fulfill a condition imposed by the FCC in approving the Bell Atlantic-GTE merger. See PSC Order No. 6317 (Dec. 9, 2003) (explaining content and cause of this expanded Lifeline offering). Whether Delaware remained a "default State" during this period when VZ-DE subsidized the deeper discounts is an issue that need now be explored or resolved. This "expanded" program ended in December 2003.

⁴In the Matter of Lifeline and Link-Up, Report and Order and Further NPRM, 19 FCC Rcd. 8302 (FCC 2004) ("Lifeline Order").

⁵47 C.F.R. §§ 54.409(b) (Lifeline eligibility criteria in "default" State); 54.415(b) (Link-Up eligibility criteria in "default" State).

⁶47 C.F.R. §§ 54.409(b), 54.410 (Lifeline); 54.415(b), 54.416 (Link-Up).

⁷47 C.F.R. §§ 54.410(a)(ii), 54.416.

State tariff. These changes incorporated into the State tariff provisions the expanded list of "eligibility-conferring" programs.⁸ At the same time, the Commission Staff began discussions with VZ-DE to determine whether, under the applicable federal default rules, it was appropriate for VZ-DE to continue to include in its State tariff Lifeline provisions language that conditioned Lifeline eligibility on the subscriber foregoing the ability to purchase many optional or vertical services.⁹ Eventually, VZ-DE revised its State tariff Lifeline provisions to delete the questioned restrictions.¹⁰ Then in June 2005, VZ-DE filed another Tariff revision to reflect its implementation of the household-income criteria for eligibility for Lifeline and Link-Up discounts.¹¹ Finally, on September 9, 2005, VZ-DE submitted another set of revised tariff sheets reflecting further textual revisions, as originally suggested by Staff. In part, these final changes sought to make the State tariff's description of how VZ-DE would administer its Lifeline/Link-Up program to more closely parallel the governing federal default rules.¹²

⁸See PSC Dckt. No. 04-017T (filed July 26, 2004; eff. July 27, 2004).

⁹That restriction - limiting Lifeline subscribers to a small group of designated vertical services - had been a continual part of VZ-DE's state-tariffed Lifeline offerings since 1997. In its Lifeline Order, the FCC expressed its belief that "any restriction on the purchase of vertical services may discourage qualified consumers from enrolling and may serve as a barrier to participation in the [Lifeline] program. Lifeline Order at ¶ 53.

¹⁰See PSC Dckt. No. 05-008T (filed April 8, 2005; eff. April 16, 2005).

¹¹See PSC Dckt. No. 05-016T (filed June 17, 2005; eff. June 22, 2005).

¹²See PSC Dckt. No. 05-016T, amended tariff sheets filed on September 9, 2005 but with effective date of June 22, 2005).

5. The Commission enters this Order not so much to "approve" the various Lifeline filings made by VZ-DE but to recount the course of the filings made since the FCC changed its federal Lifeline/Link-Up program in 2004. Indeed, given that Delaware is a "default" State, VZ-DE's Lifeline/Link-Up offerings are governed more by the federal default rules than by any "approved" State tariff provision. Any State tariff provision that might conflict with a federal default rule would necessarily have to yield. However, the Commission will accept the Lifeline and Link-Up tariff filings lodged by VZ-DE. The Commission believes that VZ-DE's last submission (in September 2005) sets forth a Lifeline and Link-Up offering that is consistent with the federal default rules. However, the filing and acceptance of the State tariff provisions should not be seen as foreclosing any later challenge that VZ-DE's program falls short of the federal directives.

Now, therefore, **IT IS ORDERED:**

1. That, as explained in the body of this Order, the Commission accepts the tariff filings made by Verizon Delaware Inc., to implement its responsibilities to provide federal Lifeline and Link-Up in this "federal default" jurisdiction. In particular, the Commission now accepts the tariff revision filing made September 9, 2005 pertaining to the following leaves in P.S.C.-Del.-No. 1:

Section 20D, Fourteenth Revised Sheet 1 (Link-Up);

Section 20D, Fifth Revised Sheet 2 (Link-Up); and

Section 20E, Eighth Revised Sheet 2 (Lifeline).

2. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

ATTEST:

/s/ Norma J. Sherwood
Acting Secretary



Public Service Commission of the District of Columbia
1333 H Street, N.W., 2nd Floor, West Tower
Washington, D.C. 20005
(202) 626-5100
www.dcpsc.org

March 27, 2012

Via First Class Mail

John J. Heitmann and Joshua T. Guyan
Kelley Drye & Warren LLP
Washington Harbour Suite 400
3050 K Street, NW
Washington, DC 20007-5108

Dear Mr. Heitmann and Mr. Guyan:

Thank you for your March 23, 2012 letter requesting information on whether the Public Service Commission of the District of Columbia ("Commission") designates wireless telecommunications carriers as eligible telecommunications carriers ("ETC") for the purposes of receiving federal universal service funding. Please be advised that, pursuant to section 34-2006(b) of the District of Columbia Code, the Commission does not have jurisdiction over wireless carriers. Thus, the Commission has no authority to designate wireless telecommunications carriers as ETCs.

Attached please find a copy of the relevant section of the District of Columbia Code for your information. Should you need anything further, please contact Lara Walt at 202-626-9191 or lwalt@psc.dc.gov.

Sincerely,

A handwritten signature in black ink, which appears to read "Richard A. Beverly".

Richard A. Beverly
General Counsel

Enclosure

COMMISSIONERS:
ART GRAHAM, CHAIRMAN
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO E. BALBIS
JULIE I. BROWN

STATE OF FLORIDA



GENERAL COUNSEL
S. CURTIS KISER
(850) 413-6199

Public Service Commission

June 2, 2011

Mr. Douglas D. Orvis, II
Bingham McCutchen, LLP
2020 K. Street NW
Washington, DC 20006-1806

Re: Undocketed – TAG Mobile, LLC's ETC Designation

Dear Mr. Orvis:

We received your May 25, 2011 letter requesting a statement that the Florida Public Service Commission's jurisdiction to grant ETC designation to TAG Mobile, LLC changed with Governor Scott's approval of HB 1231, the telecom reform bill.

This letter acknowledges that Governor Scott's approval of HB 1231, the telecom reform bill, revises Chapter 364, Florida Statutes, thereby changing the Commission's jurisdiction regarding telecommunications companies. I direct your attention to Chapter 364, Florida Statutes, including the revisions by HB 1231 for the proposition that the Federal Communications Commission, rather than this Commission is the appropriate agency to consider TAG Mobile, LLC's bid for ETC status.

Sincerely,

A handwritten signature in cursive script that reads "S. Curtis Kiser".

S. Curtis Kiser
General Counsel

cc: Beth W. Salak, Director, Division of Regulatory Analysis
Robert J. Casey, Public Utilities Supervisor, Division of Regulatory Analysis
Adam J. Teitzman, Attorney Supervisor, Office of the General Counsel
Ann Cole, Commission Clerk, Office of Commission Clerk

June 13, 2013

PUBLIC UTILITIES COMMISSION
Amendment to Standards for Designating
and Certifying Eligible
Telecommunications Carriers Qualified to
Receive Federal Universal Fund Support
(Ch. 206)

ORDER ADOPTING
AMENDED RULE AND
STATEMENT OF FACTUAL
AND POLICY BASIS

WELCH, Chairman; LITTELL and VANNOY, Commissioners

I. SUMMARY

By this Order, we adopt amendments to Chapter 206 of the Commission's rules which establishes standards for the designation and annual certification of Eligible Telecommunications Carriers (ETCs). After these amendments, the Commission will no longer certify carriers that apply for ETC designation for the sole purpose of offering Lifeline, Link-Up, or other low-income program benefits. Going forward, such carriers will apply to the Federal Communications Commission (FCC) for ETC designation.¹

II. BACKGROUND

Chapter 206, adopted by the Commission on November 20, 2007, established standards for the designation and annual certification of ETCs. The rule was created, in large measure, to supplement the federal rules for ETC designation to account for distinctions between the services provided by wireline and wireless ETCs.

Since the adoption of Chapter 206, carriers seeking ETC designation for the sole purpose of offering Lifeline, link-Up, or other low-income benefits have entered the market in ever increasing numbers.² The majority of these carriers are pre-paid wireless service providers that resell the cellular telephone service of large national carriers. These pre-paid wireless ETCs typically provide a telephone handset and offer a set number of minutes (anywhere from 68 to 250 minutes per month) to low-income

¹ This rule is a routine technical rule as defined in Title 5, chapter 375, subchapter 2-A of the Maine Revised Statutes.

² The federal Lifeline program provides a subsidy from the federal Universal Service Fund (USF) to ETCs for the purpose of providing discounted telephone service to qualifying low-income consumers. Link-Up is a federal program that provides a subsidy from the federal USF to ETCs to offset the cost of telephone service installation for low-income customers. The FCC has recently eliminated the Link-Up program for all areas of the country except Tribal Lands.

customers at no charge to the customer. The service is made "free" to the low-income customer by the application of a federal universal service fund subsidy (currently \$9.25 per month) to the monthly charge on a customer's account; a charge that exactly equals the amount of the subsidy.

When drafted, Chapter 206 did not contemplate the pre-paid Lifeline business model or the designation of "Lifeline-only" ETCs. Since the proliferation of pre-paid wireless Lifeline-only ETCs, the FCC has taken steps to standardize the certification requirements for such carriers. Notably the FCC recently enacted a requirement that a non-facilities-based wireless ETC applicant have a "compliance plan" approved by the FCC before a state commission or the FCC may designate the applicant as an ETC.³ Further, as there is no state subsidy for Lifeline service, the Commission expends substantial resources administering what is for all intents and purposes a federal program.

On April 9, 2013, we issued a Notice of Rulemaking (NOR) in this proceeding detailing the proposed amendments to Chapter 206. The Commission did not schedule a public hearing on this matter, but, pursuant to rulemaking procedures, we provided an opportunity for interested persons to request such a hearing; the Commission did not receive any public hearing requests. Additionally, we provided interested persons with an opportunity to provide written comments on the proposed amendments to Chapter 206. The deadline for submitting such comments was May 17, 2013; the Commission did not receive any comments by the deadline.

It is the view of the Commission that there is no longer any advantage to Maine consumers, financial or otherwise, for the Commission to certify ETCs that apply for the designation solely for the purpose of offering Lifeline service and receiving the federal Lifeline subsidy. Because the FCC will certify Lifeline-only ETCs, Maine consumers will continue to benefit from the availability of the services offered by those carriers.

In accordance with 5 M.R.S. § 8057-A(1), we stated in our NOR that we expect that there will be no fiscal impact from this rulemaking. Further, we stated that we expect that this rulemaking will not impose an economic burden on small businesses. We continue to believe this will be the case

III. DISCUSSION OF THE RULE AMENDMENTS

A. Section 1: Purpose

In the NOR we proposed to amend Section 1 of the rule to specify that the Commission will not designate ETCs seeking such designation solely for the purpose of receiving support to provide Lifeline, Link-Up, or other low-income services, and that carriers seeking designation for that purpose must apply to the Federal

³ In our experience, the majority of Lifeline-only wireless ETCs are non-facilities-based resellers.

Communications Commission. No comments were received regarding this proposed amendment. Therefore, we adopt the amendment to Section 1 of the rule without modification.

B. Section 2: Definitions

1. Applicant

In the NOR we proposed to amend the definition of "Applicant" to exclude carriers seeking ETC designation solely for the purpose of receiving support to provide Lifeline or other low-income services.

2. Lifeline/Link-Up

In the NOR we proposed eliminating the definition of "Lifeline/Link-up."

No comments were received regarding these proposed amendments. Therefore, we adopt these amendments to Section 2 of the rule without modification.

C. Section 3: Contents of Petition by Applicant

In addition to several non-substantive editorial changes, in the NOR we proposed eliminating the provision in Section 3 that requires ETC applicants to include in their application a statement that the ETC will advertise the availability of low-income programs such as Lifeline and Link-Up. No comments were received regarding this proposed amendment. Therefore, we adopt these amendments to Section 3 of the rule without modification.

D. Section 6: Annual Reports

In addition to several non-substantive editorial changes, in the NOR we proposed eliminating the requirement that Competitive ETCs annually certify that they have publicized the availability of low-income programs such as Lifeline and Link-Up.⁴ No comments were received regarding this proposed amendment. Therefore, we adopt these amendments to Section 6 of the rule without modification.

E. Section 7: Applicability to Carriers Designated as ETCs Before the Effective Date of this Chapter

In the NOR we proposed eliminating a superfluous section requiring submission of information by ETCs that were designated prior to December 4, 2007.

⁴ A Competitive ETC is an ETC that is not an Incumbent Local Exchange Carrier.

No comments were received regarding this proposed amendment. Therefore, we adopt this amendment to Section 7 of the rule without modification.

IV. ORDERING PARAGRAPHS

In light of the foregoing, we

O R D E R

1. That the attached Chapter 206 is hereby adopted;
2. That the Administrative Director shall notify the following of the final adoption of the attached rule:
 - a. All Local Exchange Carriers in the State of Maine;
 - b. All Eligible Telecommunications Carriers in Maine;
 - c. The Telephone Association of Maine;
 - d. All people who have filed with the Commission within the past year a written request for any Notice of Rulemaking.
3. That the Administrative Director shall send copies of this Order and the final rule:
 - a. The Secretary of State for publication in accordance with 5 M.R.S. § 8053(5); and
 - b. Executive Director of the Legislative Council.

Dated at Hallowell, Maine, this 13th day of June, 2013.

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear

Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Littell
Vannoy

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

65-407 PUBLIC UTILITIES COMMISSION

**Chapter 206: STANDARDS FOR DESIGNATING AND CERTIFYING ELIGIBLE
TELECOMMUNICATIONS CARRIERS QUALIFIED TO RECEIVE FEDERAL
UNIVERSAL SERVICE FUND SUPPORT**

SUMMARY: This Chapter establishes standards for designating and annual certification of Eligible Telecommunications Carriers (ETCs) in Maine.

TABLE OF CONTENTS

§ 1	PURPOSE	2
§ 2	DEFINITIONS	2
§ 3	CONTENTS OF PETITION BY APPLICANT	3
§ 4	COMMISSION APPROVAL OF PETITIONS	6
§ 5	ANNUAL CERTIFICATION OF ETCs	7
§ 6	ANNUAL REPORTS	8
§ 7	WAIVER	9

§ 1 PURPOSE

The purpose of this Chapter is to set forth the standards that the Commission will apply in designating a Telecommunications Provider as an "Eligible Telecommunications Carrier" (ETC) pursuant to 47 U.S.C §214(e) and annually certifying ETCs pursuant to 47 C.F.R. §54.314. The Commission does not designate as ETCs Telecommunications Providers seeking such designation solely for the purpose of receiving low-income support to provide services such as Lifeline. Telecommunications Providers seeking such designation must apply to the Federal Communications Commission (FCC).

§ 2 DEFINITIONS

- A. **Applicant.** "Applicant" is any Telecommunications Provider that petitions the Commission to be designated, pursuant to 47 U.S.C. §214(e), as an Eligible Telecommunications Carrier (ETC) for the purpose of seeking federal high cost universal service fund support pursuant to 47 C.F.R. §§ 54.307, 54.313, or 54.314.
- B. **Competitive Eligible Telecommunications Carrier and "CETC."** "Competitive Eligible Telecommunications Carrier" or "CETC" is an ETC that is not an Incumbent Local Exchange Carrier.
- C. **Eligible Telecommunications Carrier and "ETC."** "Eligible Telecommunications Carrier" or "ETC" is a provider designated by the Commission to receive support from federal universal service mechanisms in exchange for providing services supported by federal universal service mechanisms, pursuant to Section 254 of the Telecommunications Act of 1996, 47 U.S.C. §151 *et seq.*
- D. **Incumbent Local Exchange Carrier and "ILEC."** "Incumbent Local Exchange Carrier" or "ILEC" is a local exchange carrier or its successor that provided local exchange service in a defined service territory in Maine on February 8, 1996 or that is designated as an ILEC pursuant to 47 U.S.C. §251(h)(2).
- E. **Facilities.** "Facilities" means, for the purpose of §3 of this Chapter, any components of the telecommunications network that are used in provision of services that are supported by federal universal service mechanisms.
- F. **.SHP Format.** ".shp format" means the format used for creating and storing digital maps composed of shape files capable of being opened by the computer application ArcGIS.
- G. **Telecommunications Provider.** A "Telecommunications Provider" or "Provider" is any provider of communications transmission by telephone, whether the communications are accomplished with or without the use of transmission wires.

§ 3 CONTENTS OF PETITION BY APPLICANT

A petition from an Applicant that is not an ILEC for designation as an ETC must contain the following information:

A. Service Area

1. A description of the area or areas for which designation is sought; and
2. A statement that the Applicant will offer the services supported by high cost federal universal service support mechanisms throughout the area for which it seeks designation, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC).

B. Timeframes for Provision of Supported Service

A statement that the Applicant will:

1. Provide service on a timely basis to requesting customers within the Applicant's service area where the Applicant's network already passes the potential customer's premises; and
2. Provide service within a reasonable period of time, if the potential customer is within the Applicant's service area but outside its existing network coverage, if service can be provided at reasonable cost by:
 - i. Modifying or replacing the requesting customer's equipment;
 - ii. Deploying a roof-mounted antenna or other equipment;
 - iii. Adjusting the nearest cell tower;
 - iv. Adjusting network or customer facilities;
 - v. Reselling services from another carrier's facilities to provide service; or
 - vi. Employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

C. Benefit to Consumers and Investment Plan

A substantive plan of the investments to be made with initial federal support during the first five years in which support is received and a substantive description of how those expenditures will benefit customers.

1. The plan shall describe with specificity, for the first two years, the proposed improvements or upgrades to the Applicant's network throughout its proposed designated service area, and shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start

date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements.

2. If the Applicant seeks confidential protection from public release for any components of its plan submitted pursuant to subsection 3(C)(1), the Applicant shall clearly mark such information as confidential on all paper and electronic copies and shall file a petition seeking such protection. A petition for confidential protection shall include a redacted copy of the filing for which protection is sought and any additional information and legal argument demonstrating that the information should be treated as confidential pursuant to the standards of 35-A M.R.S. §1311-A or §1311-B. Upon a finding that the information is confidential, the Commission shall issue a protective order pursuant to the terms of §1311-A and/or §1311-B.
3. The plan shall include, for the last three years of the five-year planning period, as complete a description of the Applicant's anticipated buildout and network improvement plan and strategy as currently exists for corporate planning purposes.

D. Service Area Maps

For wireless Applicants:

1. a map of the State of Maine in .shp format, showing existing and planned locations of cell sites and shading to indicate where the carrier provides and plans to provide commercial mobile radio service signals, and with an indication of signal strength of each such cell site shown through shading or as a depiction of coverage at -95 dB and -85 dB in the manner specified in Chapter 101 of the ConnectME Authority's rules. If the Applicant seeks confidential protection from public release for any portion of the map submitted pursuant to this subsection, the Applicant shall clearly mark such information as confidential on all paper and electronic copies and shall file a petition seeking such protection. A petition for confidential protection shall include a redacted copy of the filing for which protection is sought and any additional information and legal argument demonstrating that the information should be treated as confidential pursuant to the standards of 35-A M.R.S. §1311-A or §1311-B. Upon a finding that the information is confidential, the Commission shall issue a protective order pursuant to the terms of §1311-A and/or §1311-B; and
2. a map or maps created pursuant to standards incorporated into the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service, showing the coverage in Maine provided to the Applicant's customers by the Applicant's own system and, to the extent practicable, the coverage provided to the Applicant's customers by its roaming partners. The Applicant shall use reasonable efforts to obtain from its roaming partners the information required for this subsection.

E. Emergencies

Information that demonstrates its ability to remain functional in an emergency including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. This information shall include a demonstration that the Applicant is able to comply with all specific back-up requirements that have been adopted by the FCC and the Commission at the time of the Applicant's submittal and a commitment to comply with such back-up requirements as the FCC or the Commission may adopt from time to time.

F. Consumer Protection

1. For an Applicant that is not a wireless carrier, a certification that it will comply with the consumer standards set forth as applicable for ILECs in Chapter 290 of the Commission's rules.
2. For an Applicant that is a wireless carrier, a certification that it will comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service.

G Local Usage Plan

For an Applicant that is a wireless carrier, information demonstrating that it offers a local usage plan that is comparable to the one offered by the ILEC in the service areas for which designation as an ETC is sought.

1. **Burden of Proof.** The burden of establishing that the qualifying local usage plan is comparable to the one offered by the ILEC rests with the Applicant, and the Applicant must submit competent evidence of such comparability with its application for designation as an ETC.
2. **Safe Harbor.** Notwithstanding subsection (1), above, an Applicant that is a wireless carrier shall be relieved of its obligation to demonstrate that it offers and advertises a qualifying local usage plan that is comparable to the one offered by the ILEC if it certifies that it offers and advertises a plan providing an unlimited number of minutes of calling in the carrier's calling area at a monthly cost of not more than \$35.00. The safe harbor plan must allow customers to terminate their service at any time with no penalty or, if a termination fee is included, must provide the customer with a handset for a fee that does not exceed \$35.

H. Equal Access

A statement that the Applicant acknowledges that it may be required to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area.

I. Additional Information

The Commission may require an Applicant to provide additional information to show that it meets the requirements of this Chapter.

§ 4 COMMISSION APPROVAL OF PETITIONS

- A. The Commission will approve an application for designation as an ETC if the petition meets the requirements of this Chapter, the designation will advance some or all of the purposes of universal service found in 47 U.S.C. §254, and the designation is in the public interest.
- B. In determining whether the designation is in the public interest, the Commission may:
 - 1. consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the Applicant's service offering, and
 - 2. in instances where an Applicant seeks designation below the study area level of a rural telephone company, the Commission may conduct an analysis to determine whether the Applicant is seeking to use federal universal service fund support to expand service in a manner that favors its low-cost areas. The Commission will conduct this analysis by comparing the population density of each wire center in which the Applicant seeks designation against that of the wire centers in the study area in which the Applicant does not seek designation.
- C. The Commission may also consider other factors that it considers necessary or useful.

§ 5 ANNUAL CERTIFICATION OF ETCs

A. Annual Filing by CETCs

Each CETC seeking continued certification of the CETC's use of federal high cost universal service fund support pursuant to 47 C.F.R. §§ 54.307, 54.313, or 54.314 must request continued certification by July 31 and must certify that it will use federal high cost universal service funds only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Each CETC seeking continued certification must also file by July 31 the annual report and certifications required pursuant to Section 6 of this Chapter.

B. Commission Consideration of CETCs

The Commission will approve continued certification of a CETC if the CETC meets the requirements of this Chapter and has, to the greatest extent possible, carried out its investment plan filed pursuant to sections 3(C) and 6(H). The Commission may also consider whether continued designation as an ETC will advance some or all of the purposes of universal service found in 47 U.S.C. §254, and the designation is in the public interest.

C. Commission Consideration of ETCs that are ILECs

The Commission shall determine whether each ILEC uses federal Universal Service Funds in a manner consistent with the requirements of 47 U.S.C. §214(e). Upon making

such a determination, the Commission shall approve continued certification of the ILEC as an ETC. The Commission may require an ILEC to provide additional information to show that it meets the federal requirements.

D. Relinquishment of ETC Designation

A CETC seeking to relinquish its designation as an ETC for an area served by more than one ETC shall file a petition with the Commission not less than 9 months prior to the date of the proposed relinquishment.

E. Consumer Assistance Division

The Commission's Consumer Assistance Division shall resolve consumer disputes associated with all carriers that are ETCs using the dispute resolution procedures established in the Commission's rules.

§ 6 ANNUAL REPORTS

Not later than July 31 of each year, each CETC that receives federal high cost universal service support must certify and/or report as described in this section. The certifications and reports are for activity related to the State of Maine in the period January 1 through December 31 of the previous year. A company officer must sign and submit the certifications and reports.

A. Report on Use of Federal Funds and Benefits to Customers

A CETC must provide a description of investments made and expenses paid with support from the federal high-cost fund.

B. Report on Failure to Provide Service

A CETC must report the number of requests for service from applicants within its designated service areas that were unfulfilled for the reporting period. The CETC must also describe in detail why the requests could not be fulfilled and how it attempted to provide service to those applicants.

C. Report on Complaints

A CETC must report the number of complaints made to the FCC and to the Commission's Consumer Assistance Division. The report must also generally describe the nature of the complaints and outcome of the carrier's efforts to resolve the complaints. For the purposes of this subsection, a complaint to the Commission means a contact that is designated as a complaint by the Commission's Consumer Assistance Division.

D. Certification of Compliance With Applicable Consumer Standards

A CETC must certify that it met the requirements of section 3(F) of this Chapter.

E. Certification of Ability to Function in Emergency Situations

A CETC must certify that it had the ability to function in emergency situations based on continued adherence to the standards found in section 3(E) of this Chapter.

F. Report and Certification of Qualifying Wireless Plan

A CETC that is a wireless carrier is required to report the total number of subscribers to its qualifying local usage plan(s) offered pursuant to the requirements of section 3(G) of this Chapter, describe all advertisements for that plan, and certify that, in light of current market conditions, the qualifying local usage plan remains comparable to the one offered by the ILEC in the service areas in the ETC's designated service area.

G. Annual Plan for Universal Service Support Expenditures

Every CETC that receives federal support from any category in the federal high-cost fund must report to the Commission the planned investment and expenses related to the State of Maine that the CETC expects to use as the basis to request federal support from any category in the federal high-cost fund.

H. Updated Five-Year Plan

The annual report required by this section must include an updated five-year plan containing all information required pursuant to section 3(C) of this Chapter.

I. Updated Wireless Buildout and Coverage Maps

The annual report required by this section must, in the case of a wireless carrier, include an update of the maps required pursuant to section 3(D) of this Chapter.

J. Additional Information

The Commission may require a CETC to provide additional information to show that it meets the requirements of this Chapter.

§ 7 WAIVER

Upon the request of any person subject to this Rule or upon its own motion, the Commission may, for good cause, waive any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 35-A. The Commission, the Director of the Consumer Assistance Division, or the Presiding Officer assigned to a proceeding related to this Chapter, may grant the waiver.

STATUTORY AUTHORITY: 35-A M.R.S.A. §§ 104, 111, and 7104(3).

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on November 28, 2007. It was filed with the Secretary of State on November 29, 2007 (filing 2007-505) and became effective on December 4, 2007.

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on June 24, 2013. It was filed with the Secretary of State on June 26, 2013 (filing 2013-151) and became effective on July 1, 2013.

THE STATE OF NEW HAMPSHIRE



PUBLIC UTILITIES COMMISSION

21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

CHAIRMAN
Thomas B. Getz

COMMISSIONERS
Clifton C. Below
Amy L. Ignatius

EXECUTIVE DIRECTOR
AND SECRETARY
Debra A. Howland

Tel. (603) 271-2431

FAX (603) 271-3878

TDD Access: Relay NH
1-800-735-2964

Website:
www.puc.nh.gov

March 28, 2011

RE: ETC Certification in New Hampshire

The federal Universal Service Fund (USF) was created by the Federal Communications Commission (FCC) to promote the availability of quality services at just and reasonable rates to all consumers including low-income customers and those in high cost areas and to increase nationwide access to advanced services in schools, libraries and rural health care facilities. To qualify for universal service funding a carrier must first be certified as an Eligible Telecommunications Carrier (ETC) by the state public utilities commission or, if the state does not assert this authority, by the FCC. *See* 47 U.S.C. §214 (e).

The New Hampshire Public Utilities Commission maintains authority to determine whether landline telecommunications carriers qualify as ETCs. Pursuant to New Hampshire RSA 362:6, the Commission has no jurisdiction over mobile radio communications services. Consequently, the state declines jurisdiction over the certification of wireless carriers as ETCs, leaving that responsibility to the FCC.

Sincerely,

A handwritten signature in cursive script, appearing to read "F. Anne Ross".

F. Anne Ross

General Counsel

New Hampshire Public Utilities Commission

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

www.dps.state.ny.us

PUBLIC SERVICE COMMISSION

GARRY A. BROWN

Chairman

PATRICIA L. ACAMPORA

MAUREEN F. HARRIS

ROBERT E. CURRY JR.

JAMES L. LAROCCA

Commissioners



PETER McGOWAN

General Counsel

JACLYN A. BRILLING

Secretary

October 28, 2010

TO WHOM IT MAY CONCERN:

Re: Boomerang Wireless CMRS Jurisdiction

We have received a letter from Boomerang Wireless, LLC d/b/a Ready Mobile (Boomerang Wireless), requesting a statement that the New York State Public Service Commission does not exercise jurisdiction over CMRS providers for the purpose of making determinations regarding Eligible Telecommunications Carrier designations under section 214 (e)(6) of 47 U.S.C. In response to this request, please be advised that section 5 (6)(a) of the New York State Public Service Law provides that:

Application of the provisions of this chapter to cellular telephone services is suspended unless the commission, no sooner than one year after the effective date of this subdivision, makes a determination, after notice and hearing, that suspension of the application of provisions of this chapter shall cease to the extent found necessary to protect the public interest.

The New York State Public Service Commission has not made a determination as of this date that regulation should be reinstituted under section 5 (6)(a) of the Public Service Law. Consequently, based on the representation by Boomerang Wireless that it provides wireless service in New York over its own facilities and Sprint's network, the company would not be subject to New York State Public Service Commission jurisdiction for the purpose of making an Eligible Telecommunications Carrier designation.

Very truly yours,

Maureen J. McCauley
Maureen J. McCauley
Assistant Counsel

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-100, SUB 133c

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Designation of Carriers Eligible for Universal)
Carrier Support) ORDER GRANTING PETITION

BY THE COMMISSION: On August 22, 2003, North Carolina RSA3 Cellular Telephone Company, d/b/a Carolina West (Carolina West), a commercial mobile radio service (CMRS) provider, filed a Petition seeking an affirmative declaratory ruling that the Commission lacks jurisdiction to designate CMRS carrier eligible telecommunications carrier (ETC) status for the purposes of receiving federal universal service support.

In support of its Petition, Carolina West stated that it was a CMRS provider authorized by the Federal Communications Commission (FCC) to provide cellular mobile radio telephone service in North Carolina, and that the FCC had clearly recognized that CMRS carriers such as Carolina West may be designated as ETCs. ETC status is necessary for a provider to be eligible to receive universal service support. Section 214(e)(6) of the Telecommunications Act provides that if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC is charged with making the ETC determination. The FCC has stated that, in order for the FCC to consider requests pursuant to this provision, a carrier must provide an "affirmative statement" from the state commission or court of competent jurisdiction that the state lacks jurisdiction to perform the designation. To date, several state commissions have declined to exercise such jurisdiction.

North Carolina has excluded CMRS from the definition of "public utility." See, G.S. 62-3(23)). Pursuant to this, the Commission issued its Order Concerning Deregulation of Wireless Providers in Docket Nos. P-100, Sub 114 and Sub 124 on August 28, 1995, concluding that the Commission no longer has jurisdiction over cellular services. Accordingly, Carolina West has now requested the Commission to issue an Order stating that it does not have jurisdiction to designate CMRS carriers ETC status for the purposes of receiving federal universal service support.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that it should grant Carolina West's Petition and issue an Order stating that it lacks jurisdiction to designate ETC status

for CMRS carriers. As noted above, in its August 28, 1995, Order in Docket Nos. P-100, Sub 114 and Sub 124, the Commission observed that G.S. 62-3(23)), enacted on July 29, 1995, has removed cellular services, radio common carriers, personal communications services, and other services then or in the future constituting a mobile radio communications service from the Commission's jurisdiction. 47 USC 3(41) defines a "state commission" as a body which "has regulatory jurisdiction with respect to the intrastate operation of carriers." Pursuant to 47 USC 214(e)(6), if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC must determine which carriers in that class may be designated as ETCs. Given these circumstances, it follows that the Commission lacks jurisdiction over CMRS services and the appropriate venue for the designation of ETC status for such services is with the FCC. Accord., Order Granting Petition, ALLTEL Communications, Inc., June 24, 2003.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of August, 2003.

NORTH CAROLINA UTILITIES COMMISSION

Patricia Swenson

Patricia Swenson, Deputy Clerk

00002203.01

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 11, 2003

IN RE:

APPLICATION OF ADVANTAGE CELLULAR
SYSTEMS, INC. TO BE DESIGNATED AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER

)
)
)
)
)
DOCKET NO.
02-01245

ORDER

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned in this docket, at the regularly scheduled Authority Conference held on January 27, 2003, for consideration of the *Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier* ("Application") filed on November 21, 2002.

Background

Advantage Cellular Systems, Inc. ("Advantage") is a commercial mobile radio service provider ("CMRS") seeking designation as an Eligible Telecommunications Carrier ("ETC") by the Authority pursuant to 47 U.S.C. §§ 214 and 254. In its *Application*, Advantage asserts that it seeks ETC status for the entire study area of Dekalb Telephone Cooperative, Inc., a rural cooperative telephone company. Advantage maintains that it meets all the necessary requirements for ETC status and therefore is eligible to receive universal service support throughout its service area.

The January 27, 2003 Authority Conference

During the regularly scheduled Authority Conference on January 27, 2003, the panel of Directors assigned to this docket deliberated Advantage's *Application*. Of foremost consideration was the issue of the Authority's jurisdiction. The panel unanimously found that the Authority lacked

jurisdiction over Advantage for ETC designation purposes.¹

This conclusion was implicitly premised on Tenn. Code Ann. § 65-4-104, which provides that:

The Authority has general supervisory and regulatory power, jurisdiction and control over all public utilities and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.

For purposes of Tenn. Code Ann. § 65-4-104, the definition of public utilities specifically excludes, with certain exceptions not relevant to this case, "[a]ny individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission."

The Authority's lack of jurisdiction over CMRS providers implicates 47 U.S.C. § 214(e), which addresses the provision of universal service. Where common carriers seeking universal service support are not subject to a state regulatory commission's jurisdiction, 47 U.S.C. § 214(e)(6) authorizes the Federal Communications Commission ("FCC") to perform the ETC designation.²

¹ This finding is not inconsistent with the Authority's decision in *In re: Universal Service Generic Contested Case*, Docket 97-00888, *Interim Order on Phase I of Universal Service*, pp. 53-57 (May 20, 1998), in which the Authority required intrastate telecommunications carriers to contribute to the intrastate Universal Service Fund including telecommunications carriers not subject to authority of the TRA. The decision in Docket No. 97-00888 was based primarily on 47 U.S.C. § 254(f) which authorizes states to adopt regulations not inconsistent with the Federal Communications Commission's rules on Universal Service and specifically requires every telecommunications carrier that provides intrastate telecommunications services to contribute to the preservation and advancement of universal service in that state. The *Interim Order* was issued prior to the effective date of 47 U.S.C. § 214(e)(6).

² 47 U.S.C. § 214(e)(6) states:

(6) Common carriers not subject to state commission jurisdiction

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

As a matter of "state-federal comity," the FCC requires that carriers seeking ETC designation "first consult with the state commission to give the state commission an opportunity to interpret state law."³ Most carriers that are not subject to a state regulatory commission's jurisdiction seeking ETC designation must provide the FCC "with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation."⁴

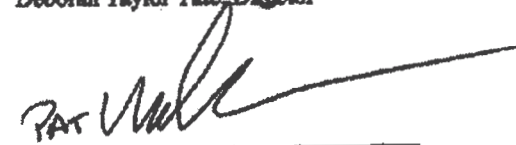
The panel noted that the FCC is the appropriate forum for Advantage to pursue ETC status pursuant to 47 U.S.C. § 214(e)(6). This Order shall serve as the above mentioned affirmative statement required by the FCC.

IT IS THEREFORE ORDERED THAT:

The Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier is dismissed for lack of subject matter jurisdiction.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Pat Miller, Director

³ *In the Matter of Federal-State Joint Bd. on Universal Service*, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 F.C.C.R. 12208, 12264, ¶ 113 (June 30, 2000).

⁴ *See id.* (The "affirmative statement of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier.")

PROJECT NO. 40561

**RULEMAKING TO AMEND §
SUBSTANTIVE RULE 26.418 RELATING §
TO DESIGNATION OF COMMON §
CARRIERS AS ELIGIBLE §
TELECOMMUNICATIONS CARRIERS §
TO RECEIVE FEDERAL UNIVERSAL §
SERVICE FUNDS §**

PUBLIC UTILITY COMMISSION

OF TEXAS

2012 NOV 21 AM 11:37

**ORDER ADOPTING AMENDMENT TO §26.418
AS APPROVED AT THE NOVEMBER 16, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §26.418, relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds, with no changes to the proposed text as published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6874). The amendment will exclude commercial mobile radio service (CMRS) resellers from eligibility for designation by the commission as an eligible telecommunications carrier (ETC). Instead, a CMRS reseller will be able to seek designation as an ETC by the Federal Communications Commission (FCC). Project Number 40561 is assigned to this proceeding.

The commission did not receive any comments on the proposed amendment.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically §51.001, which provides that it is the policy of this state to promote diversity of telecommunications providers and interconnectivity; encourage a fully competitive

telecommunications marketplace; and maintain a wide availability of high quality interoperable, standards-based telecommunications services at affordable rates.

Cross Reference to Statutes: PURA §§14.002 and 51.001.

§26.418. Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds.

- (a) **Purpose.** This section provides the requirements for the commission to designate common carriers as eligible telecommunications carriers (ETCs) to receive support from the federal universal service fund (FUSF) pursuant to 47 United States Code (U.S.C.) §214(e) (relating to Provision of Universal Service). In addition, this section provides guidelines for rural and non-rural carriers to meet the federal requirements of annual certification for FUSF support criteria and, if requested or ordered, for the disaggregation of rural carriers' FUSF support.
- (b) **Applicability.** This section applies to a common carrier seeking designation as an ETC, except for commercial mobile radio service (CMRS) resellers. A CMRS reseller may not seek designation from the commission, but instead may seek designation as an ETC by the Federal Communications Commission (FCC). This section also applies to a common carrier that has been designated by the commission as an ETC, including a CMRS reseller.
- (c) **Service areas.** The commission may designate ETC service areas according to the following criteria.
- (1) **Non-rural service area.** To be eligible to receive federal universal service support in non-rural areas, a carrier must provide federally supported services pursuant to 47 Code of Federal Regulations (C.F.R.) §54.101 (relating to

Supported Services for Rural, Insular, and High Cost Areas) throughout the area for which the carrier seeks to be designated an ETC.

- (2) **Rural service area.** In the case of areas served by a rural telephone company, as defined in §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan), a carrier must provide federally supported services pursuant to 47 C.F.R. §54.101 throughout the study area of the rural telephone company in order to be eligible to receive federal universal service support.

- (d) **Criteria for determination of ETCs.** A common carrier shall be designated as eligible to receive federal universal service support if it:

- (1) offers the services that are supported by the federal universal service support mechanisms under 47 C.F.R. §54.101 either using its own facilities or a combination of its own facilities and resale of another carrier's services; and
- (2) advertises the availability of and charges for such services using media of general distribution.

- (e) **Criteria for determination of receipt of federal universal service support.** In order to receive federal universal service support, a common carrier must:

- (1) meet the requirements of subsection (d) of this section;
- (2) offer Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E (relating to Universal Service Support for Low-Income Consumers); and

- (3) offer toll limitation services in accordance with 47 C.F.R. §54.400 (relating to Terms and Definitions) and §54.401 (relating to Lifeline Defined).

(f) **Designation of more than one ETC.**

- (1) Non-rural service areas. In areas not served by rural telephone companies, as defined in §26.404 of this title, the commission shall designate, upon application, more than one ETC in a service area so long as each additional carrier meets the requirements of subsection (c)(1) of this section and subsection (d) of this section.
- (2) Rural service areas. In areas served by rural telephone companies, as defined in §26.404 of this title, the commission may designate as an ETC a carrier that meets the requirements of subsection (c)(2) of this section and subsection (d) of this section if the commission finds that the designation is in the public interest.

(g) **Proceedings to designate ETCs.**

- (1) At any time, a common carrier may seek commission approval to be designated an ETC for a requested service area.
- (2) In order to receive support under this section for exchanges purchased from an unaffiliated carrier, the acquiring ETC shall file an application, within 30 days after the date of the purchase, to amend its ETC service area to include those geographic areas that are eligible for support.
- (3) If an ETC receiving support under this section sells an exchange to an unaffiliated carrier, it shall file an application, within 30 days after the date of the sale, to

amend its ETC designation to exclude from its designated service area those exchanges for which it was receiving support.

(h) **Application requirements and commission processing of applications.**

(1) **Requirements for notice and contents of application.**

(A) Notice of application. Notice shall be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks eligibility, the proposed effective date of the designation, and the following statement: "Persons who wish to comment on this application should notify the Public Utility Commission of Texas by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477."

(B) Contents of application for each common carrier seeking ETC designation. A common carrier that seeks to be designated as an ETC shall file with the commission an application complying with the requirements of this

section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Regulatory Division and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:

- (i) show that the applicant offers each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) (relating to Universal Service) either using its own facilities or a combination of its own facilities and resale of another carrier's services throughout the service area for which it seeks designation as an ETC;
- (ii) show that the applicant assumes the obligation to offer each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) to any consumer in the service area for which it seeks designation as an ETC;
- (iii) show that the applicant advertises the availability of, and charges for, such services using media of general distribution;
- (iv) show the service area in which the applicant seeks designation as an ETC;
- (v) contain a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the proposed notice is reasonable and in compliance with applicable law;

- (vi) contain a copy of the text of the notice;
 - (vii) contain the proposed effective date of the designation; and
 - (viii) contain any other information which the applicant wants considered in connection with the commission's review of its application.
- (C) Contents of application for each common carrier seeking ETC designation and receipt of federal universal service support. A common carrier that seeks to be designated as an ETC and receive federal universal service support shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:
- (i) comply with the requirements of subparagraph (B) of this paragraph;
 - (ii) show that the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and
 - (iii) show that the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.
- (2) **Commission processing of application.**
- (A) Administrative review. An application considered under this section may be reviewed administratively unless the presiding officer, for good cause,

determines at any point during the review that the application should be docketed.

- (i) The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.
- (ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.
- (iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the telecommunications carrier. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the telecommunications carrier.

- (iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide the commission staff with written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations regarding the application.
 - (v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.
- (B) Approval or denial of application.
- (i) An application filed pursuant to paragraph (1)(B) of this subsection shall be approved by the presiding officer if the application meets the following requirements:
 - (I) the provision of service constitutes the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c);
 - (II) the applicant will provide service using either its own facilities or a combination of its own facilities and resale of another carrier's services;
 - (III) the applicant advertises the availability of, and charges for, such services using media of general distribution;
 - (IV) notice was provided as required by this section;

- (V) the applicant satisfies the requirements contained in subsection (c) of this section; and
 - (VI) if, in areas served by a rural telephone company, the ETC designation is consistent with the public interest.
- (ii) An application filed pursuant to paragraph (1)(C) of this subsection shall be approved by the presiding officer if the application meets the following requirements:
- (I) the applicant has satisfied the requirements set forth in clause (i) of this subparagraph;
 - (II) the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and
 - (III) the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.
- (C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer shall docket the application.
- (D) Review of the application after docketing. If the application is docketed, the effective date of the application shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected

persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

- (E) **Waiver.** In the event that an otherwise ETC requests additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation, the commission may grant a waiver of these service requirements upon a finding that exceptional circumstances prevent the carrier from providing single-party service, access to enhanced 911 service, or toll limitation. The period for the waiver shall not extend beyond the time that the commission deems necessary for that carrier to complete network upgrades to provide single-party service, access to enhanced 911 service, or toll limitation services.

- (i) **Designation of ETC for unserved areas.** If no common carrier will provide the services that are supported by federal universal service support mechanisms under 47 U.S.C. §254(c) to an unserved community or any portion thereof that requests such service, the commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

- (j) **Relinquishment of ETC designation.** A common carrier may seek to relinquish its ETC designation.
- (1) **Area served by more than one ETC.** The commission shall permit a common carrier to relinquish its designation as an ETC in any area served by more than one ETC upon:
- (A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC;
 - (B) determination by the commission that the remaining eligible telecommunications carrier or carriers can offer federally supported services to the relinquishing carrier's customers; and
 - (C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier or carriers.
- (2) **Area where the common carrier is the sole ETC.** In areas where the common carrier is the only ETC, the commission may permit it to relinquish its ETC designation upon:
- (A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC; and
 - (B) commission designation of a new ETC for the service area or areas.

- (k) **Rural and non-rural carriers' requirements for annual certification to receive FUSF support.** A common carrier serving a rural or non-rural study area shall comply with the following requirements for annual certification for the receipt of FUSF support.
- (1) **Annual certification.** Common carriers must provide the commission with an affidavit annually, on or before September 1st of each year, which certifies that the carrier is complying with the federal requirements for the receipt of FUSF support. Upon receipt and acceptance of the affidavits filed on or before September 1st each year, the commission will certify these carriers' eligibility for FUSF to the FCC and the Federal Universal Service Fund Administrator by October 1st each year.
 - (2) **Failure to file.** Common carriers failing to file an affidavit by September 1st may still be certified by the commission for annual FUSF. However, the carrier is ineligible for support until the quarter following the federal universal service administrator's receipt of the commission's supplemental submission of the carrier's compliance with the federal requirements.
 - (3) **Supplemental certification.** For carriers not subject to the annual certification process, the schedule set forth in 47 C.F.R. §54.313 and 47 C.F.R. §54.314(d) for the filing of supplemental certifications shall apply.
 - (4) **Recommendation for Revocation of FUSF support certification.** The commission may recommend the revocation of the FUSF support certification of any carrier that it determines has not complied with the federal requirements pursuant to 47 U.S.C. §254(e) and will review any challenge to a carrier's FUSF

support certification and make an appropriate recommendation as a result of any such review.

- (l) **Disaggregation of rural carriers' FUSF support.** Common carriers serving rural study areas must comply with the following requirements regarding disaggregation of FUSF support.
- (1) **Election by May 15, 2002.** On or before May 15, 2002, all rural incumbent local exchange carriers (ILECs) may notify the commission of one of the following elections regarding FUSF support. This election will remain in place for four years from the effective date of certification, pursuant to 47 C.F.R. §54.315, unless the commission, on its own motion, or upon the motion of the rural ILEC or an interested party, requires a change to the elected disaggregation plan:
- (A) a rural ILEC may choose to certify to the commission that it will not disaggregate at this time;
 - (B) a rural ILEC may seek disaggregation of its FUSF support by filing a targeted plan with the commission that meets the criteria in paragraph (3) of this subsection, subject to the commission's approval of the plan;
 - (C) a rural ILEC may self-certify a disaggregation targeted plan that meets the criteria in paragraphs (3) and (4) of this subsection, disaggregate support to the wire center level or up to no more than two cost zones, or mirror a plan for disaggregation that has received prior commission approval; or
 - (D) if the rural ILEC serves a study area that is served by another carrier designated as an ETC prior to the effective date of 47 C.F.R. §54.315,

(June 19, 2001), the ILEC may only self-certify the disaggregation of its FUSF support by adopting a plan for disaggregation that has received prior commission approval.

- (2) **Abstain from filing.** If a rural ILEC abstains from filing an election on or before May 15, 2002, the carrier will not be permitted to disaggregate its FUSF support unless it is ordered to do so by the commission pursuant to the terms of paragraph (5) of this subsection.
- (3) **Requirements for rural ILECs' disaggregation plans.** Pursuant to the federal requirements in 47 C.F.R. §54.315(e) a rural ILEC's disaggregation plan, whether submitted pursuant to paragraph (1)(B), (C) or (D) of this subsection, must meet the following requirements:
 - (A) the sum of the disaggregated annual support must be equal to the study area's total annual FUSF support amount without disaggregation;
 - (B) the ratio of the per line FUSF support between disaggregation zones for each disaggregated category of FUSF support shall remain fixed over time, except as changes are required pursuant to paragraph (5) of this subsection;
 - (C) the ratio of per line FUSF support shall be publicly available;
 - (D) the per line FUSF support amount for each disaggregated zone or wire center shall be recalculated whenever the rural ILEC's total annual FUSF support amount changes and revised total per line FUSF support and updated access line counts shall then be applied using the changed FUSF support amount and updated access line counts applicable at that point;

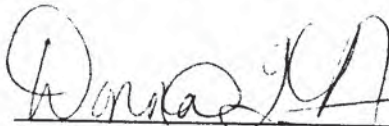
- (E) each support category complies with subparagraphs (A) and (B) of this paragraph;
 - (F) monthly payments of FUSF support shall be based upon the annual amount of FUSF support divided by 12 months if the rural ILEC's study area does not contain a competitive carrier designated as an ETC; and
 - (G) a rural ILEC's disaggregation plan methodology and the underlying access line count upon which it is based will apply to any competitive carrier designated as an ETC in the study area.
- (4) **Additional requirements for self-certification of a disaggregation plan.** Pursuant to 47 C.F.R. §54.315(d)(2), a rural ILEC's self-certified disaggregation plan must also include the following items in addition to those items required by paragraph (3) of this subsection:
- (A) support for, and a description of, the rationale used, including methods and data relied upon, as well as a discussion of how the plan meets the requirements in paragraph (3) of this subsection and this paragraph;
 - (B) a reasonable relationship between the cost of providing service for each disaggregation zone within each disaggregation category of support proposed;
 - (C) a clearly specified per-line level of FUSF support for each category pursuant to 47 C.F.R. §54.315(d)(2)(iii);
 - (D) if the plan uses a benchmark, a detailed explanation of the benchmark and how it was determined that is generally consistent with how the level of

- support for each category of costs was derived so that competitive ETCs may compare the disaggregated costs for each cost zone proposed; and
- (E) maps identifying the boundaries of the disaggregated zones within the study area.
- (5) **Disaggregation upon commission order.** The commission on its own motion or upon the motion of an interested party may order a rural ILEC to disaggregate FUSF support under the following criteria:
- (A) the commission determines that the public interest of the rural study area is best served by disaggregation of the rural ILEC's FUSF support;
- (B) the commission establishes the appropriate disaggregated level of FUSF support for the rural ILEC; or
- (C) changes in ownership or changes in state or federal regulation warrant the commission's action.
- (6) **Effective dates of disaggregation plans.** The effective date of a rural ILEC's disaggregation plan shall be as specified in 47 C.F.R. §54.315.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.418 relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds, is hereby adopted with no changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS on the 16th day of November 2012.

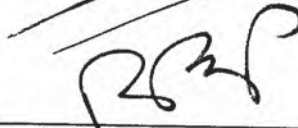
PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN

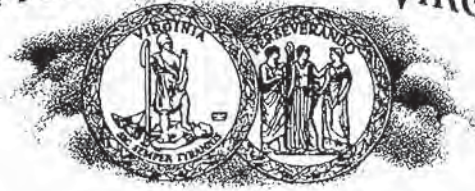


KENNETH W. ANDERSON, JR., COMMISSIONER



ROLANDO PABLOS, COMMISSIONER

COMMONWEALTH OF VIRGINIA



WILLIAM IRBY
DIRECTOR

STEVEN C. BRADLEY
DEPUTY DIRECTOR

KATHLEEN A. CUMMINGS
DEPUTY DIRECTOR

P.O. BOX 1197
RICHMOND, VA
23218-1197

TELEPHONE: (804) 371-9420
FAX: (804) 371-9069

STATE CORPORATION COMMISSION DIVISION OF COMMUNICATIONS

November 17, 2010

Ms. Jacqueline Hankins
Helein & Marshlian, LLC
The CommLaw Group
1420 Spring Hill Road, Suite 205
McLean, Virginia 22102

Dear Ms. Hankins:

This is in response to your October 25, 2010 letter to me on behalf of Boomerang Wireless LLC, d/b/a Ready Mobile ("Boomerang") requesting clarification of the Virginia State Corporation Commission's ("Commission") jurisdiction over the designation of wireless Eligible Telecommunications Carriers ("ETC") in Virginia.

Only one wireless carrier, Virginia Cellular LLC, has sought designation as an ETC in Virginia. In that instance (Case No. PUC010263), by order dated April 9, 2002, the Commission determined, pursuant to Section 214 (c) (6) of the Telecommunications Act of 1996, that Virginia Cellular LLC should apply to the Federal Communications Commission for ETC designation because it had not asserted jurisdiction over CMRS carriers. A copy of this order is enclosed.

Very truly yours,

William Irby

WI/ctj

Enclosure

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 9, 2002

COMMONWEALTH OF VIRGINIA, ex rel.¹

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUC970135

Ex Parte, in re: Implementation
of Requirements of § 214(e) of the
Telecommunications Act of 1996

IN RE:

APPLICATION OF VIRGINIA CELLULAR LLC

CASE NO. PUC010263

For designation as an eligible
telecommunications provider under
47 U.S.C. § 214(e) (2)

ORDER

On September 15, 1997, the State Corporation Commission ("Commission") established the docket in Case No. PUC970135 to consider the requests of local exchange carriers ("LECs") to be designated as eligible telecommunications carriers ("ETC designation") to receive universal service support pursuant to § 214(e) of the Telecommunications Act of 1996, 47 U.S.C. § 251 et seq., ("Act") and associated Federal Regulations.¹ The Commission's exercise of its jurisdiction under § 214(e) (2) of the Act has been to establish a simple and streamlined process for telecommunications carriers to certify their eligibility with a minimum of regulatory burden placed upon each applicant.

¹ 47 C.F.R. § 54.201-207.

All Virginia carriers receiving an ETC designation have merely been required to file an affidavit which, among other matters, certifies that all requirements of the Act for designation are met.²

Until the above-captioned Application was filed in Case No. PUC010263 by Virginia Cellular LLC ("Virginia Cellular" or "Applicant") for ETC designation, these proceedings have been uncontested. This is the first application by a Commercial Mobile Radio Service ("CMRS") carrier for ETC designation.³ Pursuant to the Order Requesting Comments, Objections, or Requests for Hearing, issued by the Commission on January 24, 2002, the Virginia Telecommunications Industry Association ("VTIA") and NTELOS Telephone Inc. ("NTELOS") filed their respective comments and requests for hearing on February 20, 2002. Virginia Cellular filed Reply Comments on March 6, 2002.⁴

The comments of NTELOS and VTIA both contest the sufficiency of the Application and claim Virginia Cellular has

² See Order issued November 21, 1997, in Case No. PUC970135, pp. 2-4 ("November 21, 1997, Order"). Also, the annual certification procedure to comply with 47 C.F.R. §§ 54.313 and 314 has been reduced to filing a form affidavit approved by the Commission in a Preliminary Order, issued August 29, 2001, in Case No. PUC010172.

³ Virginia Cellular is a CMRS carrier as defined in 47 U.S.C. § 153(27) and is authorized as the "A-band" cellular carrier for the Virginia 6 Rural Service Area, serving the counties of Rockingham, Augusta, Nelson, and Highland and the cities of Harrisonburg, Staunton, and Waynesboro.

⁴ On March 4, 2002, Virginia Cellular filed a Consent Motion requesting until March 6, 2002, to file Reply Comments. There being no objection, we now grant the Consent Motion.

failed to demonstrate how the public interest will be served.⁵ NTELOS and VTIA each allude in their comments to other expected applications for ETC designation¹ by wireless and CLEC carriers to follow this case of first impression. For that reason, we are asked by VTIA and NTELOS to convene a hearing and establish certain standards for the provisioning of the nine services specified in 47 C.F.R. § 54.101.⁶ Each applicant is required to provide these nine services to be eligible for ETC designation.

VTIA further comments that "[i]t is not clear how the designation of Virginia Cellular as an ETC will affect the distribution of Universal Funds to the existing carriers in any given rural exchange area." Virginia Cellular replies that this "macroeconomic concern" need not be addressed with this Application. Rather, the Federal Communications Commission ("FCC") and the Federal State Joint Board on Universal Service

⁵ § 214(e)(2) of the Act requires that an ETC designation in areas served by a rural telephone company be based upon a finding that the designation is in the public interest. The Commission did recognize in its November 21, 1997, Order that any carrier seeking ETC designation in a rural area would have the burden of proving that such designation is in the public interest if challenged. Virginia Cellular is seeking ETC designation in the service territories of the following rural telephone companies: Shenandoah Telephone Company ("Shenandoah"), Clifton Forge Waynesboro Telephone Company ("NTELOS"), New Hope Telephone Company, North River Cooperative, Highland Telephone Cooperative, and Mountain Grove-Williamsville Telephone Company ("MGW").

⁶ The nine services required to be offered include: voice grade access to the public switched network; local usage; dual tone multi-frequency signaling or its functional equivalent; single-party service or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation for qualifying low-income consumers. Also, the services must be advertised in appropriate media sources. See In Re: Federal-State Joint Board of Universal Service, Report and Order, CC Docket No. 96-45, ¶ 145 (May 8, 1997) ("Universal Service Report & Order").

are reported by Virginia Cellular to be conducting ongoing proceedings to ensure the solvency of the high-cost support fund.⁷ Presumably, VTIA views any public interest served by Virginia Cellular's ETC designation to depend upon whether there would be a consequent diminution of universal service funds.

Virginia Cellular cites the authority of § 214(e)(6) of the Act for this Commission to send Applicant to the FCC for ETC designation if this Commission declines to act on its Application.⁸ In its Reply Comments, Virginia Cellular reports that the "FCC has been actively processing ETC applications on behalf of states which have declined to exercise jurisdiction [over CMRS carriers]. Its internal processing time has been six months, and it has met that timeline in almost all of its proceedings [and] . . . most, if not all of the issues raised by the commenters have been previously addressed by the FCC in its prior orders involving applications for ETC status."⁹

The Commission finds that § 214(e)(6) of the Act is applicable to Virginia Cellular's Application as this Commission has not asserted jurisdiction over CMRS carriers and that the

⁷ Reply Comments at p. 5.

⁸ Pursuant to § 332(c)(3), 47 U.S.C. § 332(c)(3), state regulation of the entry of or the rates charged by any commercial mobile service or any private mobile service is preempted. The Commission has deregulated all Virginia radio common carriers and cellular mobile radio communications carriers. See Final Order issued October 23, 1995, Case No. PUC950062.

⁹ Reply Comments at p. 3.

Applicant should apply to the FCC for ETC designation.¹⁰ The Applicant points out that if Virginia Cellular is designated as an ETC carrier, then the Commission must redefine the service areas of NTELOS and Shenandoah, pursuant to 47 C.F.R.

§ 54.207(c).¹¹ The Applicant has indicated a willingness to propose a plan to redefine these companies' service areas and may submit such a plan with its application to the FCC for ETC designation.

If necessary, this Commission will participate with the FCC and Federal-State Joint Board in redefining the service areas of NTELOS and Shenandoah for "the purpose of determining universal service obligations and support mechanisms." (47 C.F.R.

§ 54.207(a)).¹² Although the FCC will make the final determination on Virginia Cellular's requests, we need to leave this docket open in case there is additional action we must take with respect to defining the service areas of NTELOS and Shenandoah.¹³

¹⁰ The action is similar to that taken by the Commission in Case No. PUC010172 in its August 29, 2001, Order that required cooperatives to certify directly with the FCC.

¹¹ The Commission believes that the service area of MGW does not necessarily need to be redefined if Virginia Cellular is designated as an ETC in that territory. However, if the FCC determines otherwise, the Commission will consider additional action if necessary.

¹² Pursuant to 47 C.F.R. § 54.207(c), if the Applicant proposes to redefine these two companies' service areas, the FCC's procedures require the Commission's agreement on the definitions.

¹³ At this juncture, it is unclear whether the Commission will need to address the redefinitions once disaggregation plans are filed at the FCC pursuant to 47 C.F.R. § 54.315(a).

NOW UPON CONSIDERATION of all the pleadings of record and the applicable law, the Commission is of the opinion that Virginia Cellular should request the FCC to grant the requested ETC designation, pursuant to 47 U.S.C. § 214(e)(6).

Accordingly, IT IS ORDERED THAT Case No. PUC010263 will remain open for further order of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: all LECs certified in the Commonwealth of Virginia, as set out in Appendix A of this Order; David A. LaFuria, Esquire, Lukas Nace Gutierrez & Sachs, 1111 Nineteenth Street, N.W., Suite 1200, Washington, D.C. 20036; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; William F. Caton, Acting Secretary, Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554; and the Commission's Office of General Counsel and Division of Communications.

EXHIBIT 3

Tempo Telecom, LLC Designated Service Area

Tempo Telecom, LLC
Designated Service Area

Tempo's Designated Service Area is Sprint and T-Mobile's wireless coverage area or Sprint and T-Mobile's licensed service area in the states of Alabama, Connecticut, Delaware, District of Columbia, Florida, Maine, New Hampshire, New York, North Carolina, Tennessee, Texas, and Virginia, which comprise a portion of or the entirety of the telephone company study areas identified in the following list:

<u>State</u>	<u>Study Area Code</u>	<u>Company Name</u>
AL	290280	ARDMORE TELEPHONE CO., INC.
AL	250282	BLOUNTSVILLE TELEPHONE CO., INC.
AL	250283	BRINDLEE MOUNTAIN TELEPHONE LLC
AL	250284	BUTLER TELEPHONE CO., INC.
AL	250285	CASTLEBERRY TELEPHONE CO., INC.
AL	259789	CENTURYTEL-AL-NORTH
AL	259788	CENTURYTEL-AL-SOUTH
AL	250290	FARMERS TELECOMMUNICATIONS COOPERATIVE, INC.
AL	250306	FRONTIER COMMUNICATIONS OF ALABAMA, LLC
AL	250301	FRONTIER COMMUNICATIONS OF LAMAR COUNTY, LLC
AL	250318	FRONTIER COMMUNICATIONS OF THE SOUTH, LLC - AL
AL	210291	GTC, INC.
AL	250298	GULF TELEPHONE CO.
AL	250299	HAYNEVILLE TELEPHONE CO., INC.
AL	250300	HOPPER TELECOMMUNICATIONS LLC
AL	220371	KNOLOGY OF THE VALLEY, INC.
AL	250295	KNOLOGY TOTAL COMMUNICATIONS, INC.
AL	250305	MON - CRE TELEPHONE COOPERATIVE, INC.
AL	250307	MOUNDVILLE TELEPHONE CO.
AL	250308	NEW HOPE TELEPHONE COOPERATIVE
AL	250311	OAKMAN TELEPHONE CO., INC.
AL	250312	OTELCO TELEPHONE LLC
AL	250314	PEOPLES TELEPHONE CO., INC.
AL	250316	RAGLAND TELEPHONE CO., INC.
AL	255181	SOUTH CENTRAL BELL-AL
AL	250322	UNION SPRINGS TELEPHONE CO., INC.
AL	220324	VALLEY TELEPHONE CO., LLC
AL	250302	WINDSTREAM ALABAMA, INC.
CT	135200	SOUTHERN NEW ENGLAND TELEPHONE COMPANY
CT	132454	THE WOODBURY TELEPHONE COMPANY
DE	565010	VERIZON DELAWARE
DC	575020	VERIZON WASHINGTON DC INC.

Tempo Telecom, LLC
Designated Service Area

<u>State</u>	<u>Study Area Code</u>	<u>Company Name</u>
FL	215191	SOUTHERN BELL-FL
FL	210341	EMBARQ FLORIDA INC.
FL	210318	FRONTIER COMMUNICATIONS OF THE SOUTH, LLC - FL
FL	210291	GTC, INC.
FL	210329	GTC, INC.
FL	210339	GTC, INC.
FL	210331	ITS TELECOMMUN. SYSTEMS, INC.
FL	210335	NORTHEAST FLORIDA TELEPHONE CO., INC.
FL	210338	QUINCY TELEPHONE CO.
FL	210330	SMART CITY TELECOM LLC DBA SMART CITY TELECOM
FL	210328	VERIZON FLORIDA INC.
FL	210336	WINDSTREAM FLORIDA, INC.
ME	100004	CHINA TELEPHONE CO.
ME	100005	COBBOSSEECONTEE TELEPHONE COMPANY
ME	100015	COMMUNITY SERVICE TELEPHONE CO.
ME	100010	HAMPDEN TELEPHONE CO.
ME	100011	HARTLAND & ST. ALBANS TELEPHONE CO.
ME	103315	MID-MAINE TELECOM, LLC
ME	105111	NO NEW ENGLAND TEL OP DBA FAIRPOINT COMM - ME
ME	103313	NORTHLAND TELEPHONE OF MAINE, INC.
ME	100019	OXFORD WEST TELEPHONE COMPANY
ME	100020	PINE TREE TELEPHONE LLC
ME	100022	SACO RIVER TELEPHONE LLC
ME	103313	SIDNEY TELEPHONE CO.
ME	100025	STANDISH TELEPHONE CO.
ME	100027	UNION RIVER TELEPHONE CO.
ME	100029	UNITY TELEPHONE CO., INC. (UNITEL)
ME	100034	WEST PENOBSCOT TELEPHONE & TELEGRAPH CO.
NH	120043	DUNBARTON TELEPHONE COMPANY
NH	120039	GRANITE STATE TELEPHONE INC.
NH	123321	HOLLIS TELEPHONE COMPANY INC.
NH	120045	KEARSARGE TELEPHONE COMPANY
NH	120047	MERRIMACK COUNTY TELEPHONE
NH	123321	CONTOOCOOK TELEPHONE COMPANY
NH	125113	NORTHERN NEW ENGLAND
NH	120049	UNION TELEPHONE COMPANY
NH	120050	WILTON TELEPHONE COMPANY
NY	150073	BERKSHIRE TELEPHONE CO.
NY	150076	CASSADAGA TELEPHONE CORP.

Tempo Telecom, LLC
Designated Service Area

<u>State</u>	<u>Study Area Code</u>	<u>Company Name</u>
NY	150077	CHAMPLAIN TELEPHONE CO.
NY	150078	CHAUTAUQUA & ERIE TELEPHONE CORP.
NY	150079	CHAZY & WESTPORT TELEPHONE CORP.
NY	150081	CITIZENS HAMMOND NY
NY	154532	CITIZENS-FRONTIER-NY
NY	154533	CITIZENS-FRONTIER-NY
NY	154534	CITIZENS-FRONTIER-NY
NY	150088	DELHI TELEPHONE CO.
NY	150089	DEPOSIT TELEPHONE CO., INC.
NY	150091	DUNKIRK & FREDONIA TELEPHONE CO.
NY	150092	EDWARDS TELEPHONE CO., INC.
NY	150093	EMPIRE TELEPHONE CORP.
NY	150095	FISHERS ISLAND TELEPHONE COOPERATIVE
NY	150072	FRONTIER COMMUNICATIONS OF AUSABLE VALLEY, INC.
NY	150100	FRONTIER COMMUNICATIONS OF NEW YORK, INC.
NY	150122	FRONTIER COMMUNICATIONS OF SENECA GORHAM, INC.
NY	150128	FRONTIER COMMUNICATIONS OF SYLVAN LAKE, INC.
NY	150121	FRONTIER TELEPHONE OF ROCHESTER INC
NY	150097	GERMANTOWN TELEPHONE CO., INC.
NY	150099	HANCOCK TELEPHONE CO. NY
NY	150105	MIDDLEBURGH TELEPHONE CO.
NY	150107	NEWPORT TELEPHONE CO., INC.
NY	150108	NICHOLVILLE TELEPHONE CO., INC.
NY	150110	OGDEN TELCO NY DBA FRONTIER ODGEN TELEPHONE CO
NY	150111	ONEIDA COUNTY RURAL TELEPHONE CO.
NY	150112	ONTARIO TELEPHONE COMPANY, INC.
NY	150114	ORISKANY FALLS TELEPHONE CORP.
NY	150116	PATTERSONVILLE TELEPHONE CO.
NY	150118	PORT BYRON TELEPHONE CO.
NY	150125	STATE TELEPHONE CO.
NY	150084	TACONIC TELEPHONE CORP.
NY	150129	TOWNSHIP TELEPHONE CO., INC.
NY	150131	TRUMANSBURG TELEPHONE CO.
NY	155130	VERIZON NEW YORK, INC.
NY	150133	VERNON TELEPHONE CO., INC.
NY	150135	WARWICK VALLEY TELEPHONE CO.
NY	150106	WINDSTREAM NEW YORK, INC. - FULTON
NY	150109	WINDSTREAM NEW YORK, INC. - JAMESTOWN
NY	150113	WINDSTREAM NEW YORK, INC. - RED JACKET
NC	230468	ATLANTIC MEMBERSHIP
NC	230469	BARNARDSVILLE TELEPHONE CO.

Tempo Telecom, LLC
Designated Service Area

<u>State</u>	<u>Study Area Code</u>	<u>Company Name</u>
NC	230470	CAROLINA TEL & TEL
NC	230471	CENTEL OF NC
NC	230473	CITIZENS TELEPHONE CO.
NC	230478	ELLERBE TELEPHONE CO., INC.
NC	230479	FRONTIER COMMUNICATIONS OF THE CAROLINAS INC.
NC	230509	FRONTIER COMMUNICATIONS OF THE CAROLINAS INC.
NC	230485	MEBTTEL, INC.
NC	230491	NORTH STATE TELEPHONE CO.
NC	230497	PIEDMONT TELEPHONE MEMBERSHIP CORP.
NC	230494	PINEVILLE TELEPHONE CO.
NC	230495	RANDOLPH TELEPHONE MEMBERSHIP CORP.
NC	230498	SALUDA MOUNTAIN TELEPHONE CO.
NC	230501	SKYLINE TELEPHONE MEMBERSHIP CORP.
NC	235193	SOUTHERN BELL - NC
NC	230502	STAR TELEPHONE MEMBERSHIP CORP.
NC	230503	SURRY TELEPHONE MEMBERSHIP CORP.
NC	230505	TRI - COUNTY TELEPHONE MEMBERSHIP CORP.
NC	230864	VERIZON SOUTH, INC. - NC
NC	230510	WILKES TELEPHONE MEMBERSHIP CORP.
NC	230474	CONCORD TEL CO
NC	230483	WINDSTREAM LEXCOM COMMUNICATIONS, INC.
NC	230476	WINDSTREAM NORTH CAROLINA, INC.
NC	230511	YADKIN VALLEY TELEPHONE MEMBERSHIP CORP.
TN	290280	ARDMORE TELEPHONE CO., INC.
TN	290553	BEN LOMAND RURAL TELEPHONE COOPERATIVE, INC.
TN	290554	BLED SOE TELEPHONE COOPERATIVE
TN	290557	CENTURYTEL-CLAIBORNE
TN	290552	CENTURYTEL-ADAMSVILLE
TN	290574	CENTURYTEL-OOLTEWAH
TN	294336	CITIZENS - FRONTIER COMM OF TN, LLC
TN	290580	CITIZENS - FRONTIER VOL STATE
TN	290559	CONCORD TELEPHONE EXCHANGE, INC.
TN	290561	CROCKETT TELEPHONE CO., INC.
TN	290562	DEKALB TELEPHONE COOPERATIVE
TN	290565	HIGHLAND TELEPHONE COOPERATIVE, INC. - TN
TN	290566	HUMPHREYS COUNTY TELEPHONE CO.
TN	290571	MILLINGTON TELEPHONE CO., INC.
TN	290573	NORTH CENTRAL TELEPHONE COOPERATIVE, INC. - TN
TN	230501	SKYLINE TELEPHONE MEMBERSHIP CORP.
TN	295185	SO. CENTRAL BELL - TN
TN	290578	TELLICO TELEPHONE CO., INC.

Tempo Telecom, LLC
Designated Service Area

<u>State</u>	<u>Study Area Code</u>	<u>Company Name</u>
TN	290575	TENNESSEE TELEPHONE CO.
TN	290579	TWIN LAKES TELEPHONE COOPERATIVE CORP.
TN	290581	UTC OF TN
TN	290567	UNITED INTER-MT-TN
TN	290598	WEST KENTUCKY RURAL TELEPHONE COOP. CORP., INC.
TN	290583	WEST TENNESSEE TELEPHONE CO., INC.
TX	442090	ALENCO COMMUNICATIONS, INC.
TX	442039	BIG BEND TELEPHONE CO., INC.
TX	442038	BLOSSOM TELEPHONE CO.
TX	442073	BORDER TO BORDER COMMUNICATIONS
TX	442040	BRAZORIA TELEPHONE CO.
TX	442041	BRAZOS TELECOMMUNICATIONS, INC.
TX	440425	CAMERON TELEPHONE CO.
TX	442046	CAP ROCK TELEPHONE COOPERATIVE
TX	442114	CENTEL OF TEXAS
TX	442052	CENTRAL TEXAS TELEPHONE COOPERATIVE, INC.
TX	442101	CENTURYTEL OF LAKE DALLAS, INC. DBA CENTURYLINK
TX	442117	CENTURYTEL OF PORT ARANSAS, INC. DBA CENTURYLINK
TX	442140	CENTURYTEL OF SAN MARCOS, INC. DBA CENTURYLINK
TX	442057	COLEMAN COUNTY TELEPHONE COOPERATIVE, INC.
TX	442059	COLORADO VALLEY TELEPHONE COOPERATIVE, INC.
TX	442061	COMMUNITY TELEPHONE CO.
TX	442072	CONSOLIDATED COMMUNICATIONS OF FORT BEND CO.
TX	442109	CONSOLIDATED COMMUNICATIONS OF TEXAS CO.
TX	442065	CUMBY TELEPHONE COOPERATIVE, INC.
TX	442262	E.N.M.R. TELEPHONE COOPERATIVE
TX	442068	EASTEX TELEPHONE COOPERATIVE, INC.
TX	442069	ELECTRA TELEPHONE CO., INC.
TX	442070	ETEX TELEPHONE COOPERATIVE, INC.
TX	442091	ETS TELEPHONE COMPANY, INC.
TX	442071	FIVE AREA TELEPHONE COOPERATIVE, INC.
TX	442076	GANADO TELEPHONE CO., INC.
TX	442083	GUADALUPE VALLEY TELEPHONE COOPERATIVE, INC.
TX	442086	HILL COUNTRY TELEPHONE COOPERATIVE, INC.
TX	442093	INDUSTRY TELEPHONE CO.
TX	442103	LA WARD TELEPHONE EXCHANGE, INC.
TX	442104	LAKE LIVINGSTON TELEPHONE COMPANY
TX	442105	LIPAN TELEPHONE CO.
TX	442107	LIVINGSTON TELEPHONE CO.
TX	442112	MID-PLAINS RURAL TELEPHONE COOPERATIVE, INC.
TX	442116	MUENSTER TELEPHONE CORP. OF TEXAS

Tempo Telecom, LLC
Designated Service Area

<u>State</u>	<u>Study Area Code</u>	<u>Company Name</u>
TX	442043	NORTH TEXAS TELEPHONE CO.
TX	442130	PEOPLES TELEPHONE COOPERATIVE
TX	442131	POKA - LAMBRO TELEPHONE COOPERATIVE, INC.
TX	442134	RIVIERA TELEPHONE CO., INC.
TX	442141	SANTA ROSA TELEPHONE COOPERATIVE, INC.
TX	442143	SOUTH PLAINS TELEPHONE COOPERATIVE, INC.
TX	401724	SOUTHWEST ARKANSAS TELEPHONE COOPERATIVE, INC.
TX	442135	SOUTHWEST TEXAS TELEPHONE CO.
TX	445216	SOUTHWESTERN BELL TELEPHONE
TX	442150	TATUM TELEPHONE CO.
TX	442151	TAYLOR TELEPHONE COOPERATIVE, INC.
TX	442060	TOTELCOM COMMUNICATIONS, LLC
TX	442084	UNITED TELEPHONE OF TEXAS INC DBA CENTURYLINK
TX	442159	VALLEY TELEPHONE COOPERATIVE, INC.
TX	442080	GTE SW VERIZON-TX
TX	442154	VERIZON SOUTHWEST INC.
TX	442168	WES - TEX TELEPHONE COOPERATIVE, INC.
TX	442071	WEST PLAINS TELECOMMUNICATIONS, INC.
TX	442166	WEST TEXAS RURAL TELEPHONE COOPERATIVE, INC.
TX	441163	WINDSTREAM - VALOR TELECOMM TX, LD-TX
TX	442097	WINDSTREAM COMMUNICATIONS - KERRVILLE
TX	442147	WINDSTREAM COMMUNICATIONS - SUGAR LAND
TX	442153	WINDSTREAM COMMUNICATIONS - TEXAS
TX	442170	XIT RURAL TELEPHONE COOPERATIVE, INC.
VA	190217	AMELIA TELEPHONE CORP.
VA	190219	BUGGS ISLAND TELEPHONE COOPERATIVE
VA	190254	CENTEL OF VIRGINIA
VA	190226	NTELOS, INC. (LUMOS TELEPHONE INC.)
VA	190248	SCOTT COUNTY TELEPHONE COOPERATIVE, INC.
VA	190250	SHENANDOAH TEL CO
VA	190567	UNITED INTER-MT-VA
VA	190233	VERIZON SOUTH INC.-VA (CONTEL)
VA	195040	VERIZON VIRGINIA, INC.

EXHIBIT 4

Examples of Marketing Material

fold

You may qualify
if you participate
in programs such
as Food Stamps
or Medicaid.

NO
CONTRACT
CREDIT CHECK
OR HIDDEN FEES

Back
We're ready
to help! Visit
MyTempo.com
to sign up today.

Forms of documentation necessary for enrollment: All subscribers will be required to demonstrate eligibility based at least on (1) Household income at or below 135% (or 150% In Kansas, Michigan and Ohio or 175% in Nevada) of Fed Poverty guidelines for a household of that size; OR (2) the household's participation in a qualifying state, federal or Tribal program, (a) current or prior year's statement of benefits from a qualifying state, federal or Tribal program. (b) a notice letter of participation in a qualifying state, federal or Tribal program. (c) program participation documents (e.g., consumers SNAP card, Medicaid card, or copy thereof). (d) other official document evidencing the consumer's participation in a qualifying state, federal or Tribal program. Income eligibility: prior year's state, federal or Tribal tax return, current income statement from an employer or paycheck. Social Security statement of benefits. Veterans Administration statement of benefits. Retirement/pension statement of benefits. Unemployment/Workmen's Compensation statement of benefits. Federal or Tribal notice letter of participation in General Assistance. Divorce decree, child support award, or other official document containing income information for at least three (3) months time.

For residents of Georgia: Unresolved complaints concerning Lifeline service can be directed to the Georgia Public Service Commission Affairs unit at 404-636-4501 or 800-282-5813.

For residents of Kansas: Unresolved complaints concerning Lifeline service can be directed to the Kansas Corporation Commission, Office of Public Affairs & Consumer Protection at KCC – Consumer Protection, 1500 SW Arrowhead Road, Topeka, KS 66604 or toll-free at 800-662-0027 or in Topeka 785-271-3140. Hearing or speech impaired/TDD – Kansas Relay Center 800-766-3777.

For residents of Wyoming: Tempo's Lifeline Wireless coverage serves Cheyenne and Jackson/Teton Village, Wyoming. Additional service area is available via roaming for an additional charge.

IMPORTANT: Consumers who willfully make a false statement in order to obtain the Lifeline benefit can be punished by fine or imprisonment or can be barred from the program. Service is non-transferable.

Tempo Telecom, LLC is an Eligible Telecommunications Carrier (ETC), doing business as Tempo.

©2016, MYTEMPO.COM. ALL RIGHTS RESERVED.

Outside

fold

Front
temposm

FREE

LIFELINE PHONE WITH

250

Minutes included per month!*



* See inside for details.

FREE

LIFELINE PHONE WITH

250

Minutes included per month!*

CHOOSE YOUR FREE MONTHLY PLAN! 250 MINUTES OR 150 MINUTES WITH ROLLOVER.

Both plans include: Nationwide Calling, Text Messaging, Caller ID, Voicemail, Additional Minute Plans, 911 Service and more!

Simply Provide Documentation of Eligibility

Tempo is a Lifeline supported service, a government assistance program. Only eligible customers may enroll in the program.

Lifeline benefits are limited to a single line of service per household. You may not receive multiple Lifeline benefits. You may apply your Lifeline discount to either one landline or one wireless number, but you cannot have the discount on both.

You must complete Lifeline application and provide Proof of Benefit to obtain service. You may qualify if you have Food Stamps, Medicaid or are enrolled in other governmental assistance programs.



fold

You may qualify
if you participate
in programs such
as Food Stamps
or Medicaid.

NO
CONTRACT
CREDIT CHECK
OR HIDDEN FEES

Back
We're ready
to help! Visit
MyTempo.com
to sign up today.

Forms of documentation necessary for enrollment: All subscribers will be required to demonstrate eligibility based at least on (1) Household income at or below 135% (or 150% In Kansas, Michigan and Ohio or 175% in Nevada) of Fed Poverty guidelines for a household of that size; OR (2) the household's participation in a qualifying state, federal or Tribal program, (a) current or prior year's statement of benefits from a qualifying state, federal or Tribal program. (b) a notice letter of participation in a qualifying state, federal or Tribal program. (c) program participation documents (e.g., consumers SNAP card, Medicaid card, or copy thereof). (d) other official document evidencing the consumer's participation in a qualifying state, federal or Tribal program. Income eligibility: prior year's state, federal or Tribal tax return, current income statement from an employer or paycheck. Social Security statement of benefits. Veterans Administration statement of benefits. Retirement/pension statement of benefits. Unemployment/Workmen's Compensation statement of benefits. Federal or Tribal notice letter of participation in General Assistance. Divorce decree, child support award, or other official document containing income information for at least three (3) months time.

For residents of Georgia: Unresolved complaints concerning Lifeline service can be directed to the Georgia Public Service Commission Affairs unit at 404-636-4501 or 800-282-5813.

For residents of Kansas: Unresolved complaints concerning Lifeline service can be directed to the Kansas Corporation Commission, Office of Public Affairs & Consumer Protection at KCC – Consumer Protection, 1500 SW Arrowhead Road, Topeka, KS 66604 or toll-free at 800-662-0027 or in Topeka 785-271-3140. Hearing or speech impaired/TDD – Kansas Relay Center 800-766-3777.

For residents of Wyoming: Tempo's Lifeline Wireless coverage serves Cheyenne and Jackson/Teton Village, Wyoming. Additional service area is available via roaming for an additional charge.

IMPORTANT: Consumers who willfully make a false statement in order to obtain the Lifeline benefit can be punished by fine or imprisonment or can be barred from the program. Service is non-transferable.

Tempo Telecom, LLC is an Eligible Telecommunications Carrier (ETC), doing business as Tempo.

©2016, MYTEMPO.COM. ALL RIGHTS RESERVED.

Outside

fold

Front
temposm

FREE

LIFELINE PHONE WITH

250

Minutes included per month!*

* See inside for details.



Choose your
FREE
monthly plan!
250 minutes
or 150 minutes
with Rollover.

Both plans include: Nationwide Calling, Text Messaging, Caller ID, Voicemail, Additional Minute Plans, 911 Service and more!

Simply Provide Documentation of Eligibility

Tempo is a Lifeline supported service, a government assistance program. Only eligible customers may enroll in the program.

Lifeline benefits are limited to a single line of service per household. You may not receive multiple Lifeline benefits. You may apply your Lifeline discount to either one landline or one wireless number, but you cannot have the discount on both.

You must complete Lifeline application and provide **Proof of Benefit** to obtain service. You may qualify if you have Food Stamps, Medicaid or are enrolled in other governmental assistance programs.



Choose your
FREE
monthly plan!
250 minutes
or 150 minutes
with Rollover.

Both plans include: Nationwide
Calling, Text Messaging, Caller ID,
Voicemail, Additional Minute Plans, 911
Service and more!

Simply Provide Documentation of Eligibility

Tempo is a Lifeline supported service, a government assistance program.

Only eligible customers may enroll in the program.

Lifeline benefits are limited to a single line of service per household.

You may not receive multiple Lifeline benefits. You may apply your Lifeline discount to either one landline or one wireless number, but you cannot have the discount on both.

You must complete Lifeline application and provide Proof of Benefit to obtain service.

You may qualify if you have Food Stamps, Medicaid or are enrolled in other governmental assistance programs.



EXHIBIT 5

Revised 2016 Certification and Enrollment Forms



Lifeline Enrollment And Recertification Form

Three Easy Steps to Complete:

Step #1 – Complete Lifeline Enrollment Form on page 2

Step #2 – Locate your Lifeline Benefit Documentation

(More info on your required documentation on pages 4 and 5)

**Step #3 – Send completed Lifeline Enrollment Form and Lifeline
Benefit Documentation to Tempo**

(There are many convenient ways to send them, check page 3)



Lifeline Enrollment/Recertification Form

Account #: _____

This signed application is required to enroll you in the Lifeline program in your state. This application is only for the purpose of verifying your participation in these programs and will not be used for any other purpose.

Things to know about the Lifeline Program:

- Lifeline is a Federal benefit that is not transferrable to any other person;
- Lifeline service is available for only one line per household. A household cannot receive benefits from multiple providers. Not all Lifeline services are marketed under the name Lifeline, and may be offered under other names;
- A household is defined, for purposes of the Lifeline program, as any individual or group of individuals living at the same address that share income and expenses; and,
- Violation of the one-per household rule is not permitted under federal rules and will result in the subscriber's de-enrollment from the program and possible criminal prosecution by the U.S. Government.

First Name: _____ MI: _____ Last Name: _____ Date of Birth: _____

Last Four Digits of Social Security Number: _____ Contact Telephone Number: _____

Residential Address:

Must be a street address (not a P.O. Box) and your principal residence.

Billing Address:

May contain a P.O. Box.

_____ Check here if the billing address is the same as the residential address.

Address Line 1: _____

Address Line 1: _____

Address Line 2: _____

Address Line 2: _____

City, State and Zip: _____

City, State and Zip: _____

This Address Is: _____ Permanent _____ Temporary *(If temporary, your address must be certified or updated every 90 days.)*

_____ A shared, multi-household residence **→**
(Complete Household Worksheet)

(Initial)

If shared, multi-household residence, I hereby certify that other household adults do not contribute income and/or share expenses in my household. *Complete Household Worksheet.*

_____ I hereby certify that I qualify to participate in at least one of the following programs: (check all that apply)
(Initial) Please see the related documentation requirements on page 4.

- _____ Supplemental Nutrition Assistance Program (SNAP) formerly known as Food Stamps
- _____ Federal Public Housing Assistance (FPHA) or Section 8
- _____ Low Income Home Energy Assistance Program (LIHEAP)
- _____ National School Lunch Program's free lunch program

- _____ Supplemental Security Income (SSI)
- _____ Temporary Assistance for Needy Families (TANF)
- _____ Medicaid

_____ I hereby certify that my household income is at or below 135% of the Federal Poverty Guidelines; there are _____ members in my household.
(initial) Please see the Federal Poverty Guidelines and the related documentation requirements on page 4.

I certify, under penalty of perjury: (Initial by Each Certification)

The information provided in this application is true and correct to the best of my knowledge; I acknowledge that willfully providing false or fraudulent information in order to receive Lifeline service is punishable by fine or imprisonment, termination of all Lifeline benefits, and being barred from participating in the Lifeline program.

_____ I acknowledge that non-usage over a consecutive 60-day period will result in my de-enrollment from this Lifeline service.

_____ I am eligible for Lifeline service through participation in the qualifying program(s) or meeting the income requirements as identified above.

_____ I have provided documentation of eligibility for Lifeline service, unless otherwise specifically exempted from providing such documentation.

I will inform Tempo within 30 days of any potential change in eligibility, including, but not limited to: (i) a move or change of address; (ii) any change in participation in the programs identified above or change in income or household members; (iii) receiving Lifeline service from another provider; or (iv) any other change that would affect my eligibility for Lifeline service. If I fail to inform Tempo of any of these changes, I understand under penalty of perjury, I may be subject to penalties.

_____ I have provided the address where I currently reside and, if a temporary address has been provided, then I acknowledge that Tempo will attempt to verify my address every 90 days, and, if I do not respond to verification attempts within 30 days, then I may be de-enrolled from my Lifeline benefits.

_____ My household will receive only one Lifeline benefit and, to the best of my knowledge, no one in my household is currently receiving Lifeline service from any other provider.

_____ I acknowledge that I will be required to annually re-certify eligibility and may be required to re-certify continued eligibility for Lifeline at any time and failure to re-certify will result in the termination of Lifeline benefits or other penalties.

_____ I authorize Tempo and its agents to access any records (including financial records) required to verify my statements herein and to confirm my eligibility for Lifeline service. I authorize government agencies and their authorized representatives to discuss with and/or provide information to Tempo and its agents verifying my participation in public assistance programs that qualify me for Lifeline service.

_____ I acknowledge and consent to my name, telephone number, and address being divulged to the Universal Service Administrative Company (USAC) (the administrator of the program) and/or its agents for the purpose of maintaining the information in a database and verifying that I, as a subscriber, do not receive more than one Lifeline benefit. In the event that USAC identifies that I am receiving more than one Lifeline subsidy for my household, all carriers involved may be notified so that I may select one service and be de-enrolled from the other.

APPLICANT SIGNATURE/TPV ID: _____

DATE: _____

FOR TEMPO OFFICE USE ONLY

Account #: _____ **TPV ID:** _____

Company Representative Name: _____

☐ Database Queried? Date: ____/____/____ Database Name: _____

☐ ETC Eligibility Review Confirmation Type: ☐ Written, attached ☐ Screenshot, attached ☐ ETC employee

Type of Documentation: ☐ Benefits Card
 ☐ Award Letter
 ☐ Voucher
 ☐ Income Statement
 ☐ Other _____

☐ State Agency Queried? Date: ____/____/____ Agency Name: _____

Agency contact: _____ Is Confirmation Notice Attached? ☐ Yes ☐ No

How received: ☐ In person
 ☐ Fax Date/Expiration Date of Documentation: ____/____/____
 ☐ Email Describe Documentation: _____
 ☐ Text Photo Name on Documentation: _____
 ☐ Mail

Date reviewed: ____/____/____ Applicant Name: _____

☐ Applicant name different than name on documentation (Note relationship to applicant: _____)

_____ Certification that individual is part of applicant's household (**MUST certify with applicant in-person or verbally**)

_____ Certification that individual is does not already receive Lifeline (**MUST certify with applicant in-person or verbally**)

Representative Signature: _____ Date: ____/____/____

NOTES : _____

HOW TO SUBMIT LIFELINE ENROLLMENT FORM & ELIGIBILITY DOCUMENTATION:

TEXT: (**NOT** available for Lifeline Enrollment Form)

(816) 446-3388

FAX:

(855) 900-1486

EMAIL: (Customer)

lifeline@mytempo.com

EMAIL: (Authorized Dealer)

dealersupport@mytempo.com

POSTAL:

Tempo-Lifeline
1301 Chestnut
Emporia, KS 66801

DOCUMENTATION REQUIREMENTS

**You are required to provide proof of your participation in the programs you identified
OR proof of your qualifying income.**

PROGRAM ELIGIBILITY

If, on page 2 of this form, you indicated you were in a qualifying program, you must provide documentation to prove receipt of benefits under these programs to Tempo. Upon examination by Tempo, any copies, photos or faxes of your documentation will be destroyed or returned to you at your request. The beneficiary named on the NSLP documentation may be a dependent of the Lifeline applicant, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline. Acceptable forms of documentation are described below:

Supplemental Nutrition Assistance Program (SNAP)

The Supplemental Nutrition Assistance Program (SNAP) was previously known as Food Stamps. Beneficiary cards and award letters may vary because SNAP is administered on a state level. Because not all beneficiary cards include the recipient's name, it is recommended that an award letter from the local state agency be used for Lifeline verification purposes. All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary and date of award.

Federal Public Housing Assistance (FPHA) or Section 8

There are two types of documentation that can prove receipt of benefits under the Federal Public Housing Assistance (FPHA), or Section 8, Program. First, an applicant can provide an award letter. A recipient of Public Housing Assistance (FPHA), or Section 8, receives an award letter from his or her local Public Housing Agency (PHA). The award letter should include the following information: name of program, date of award, name of beneficiary and award amount. Second, an applicant can provide either a [Public Housing Assistance Lease Agreement](#) or a Section 8 Voucher. These items should clearly reflect the type of Public Housing Assistance credit issued. If the beneficiary does not have an award letter, lease agreement, or voucher, the applicant can contact the agency that approved the application and request formal documentation of his or her award. To find contact information for a local Public Housing Agency, please visit the U.S. Department of Housing and Urban Development's [state contact and agency listing](#).

Low Income Home Energy Assistance Program (LIHEAP)

Because the Low Income Home Energy Assistance Program (LIHEAP) is administered by a wide range of local agencies, the program's name may vary by state (note that most include the words "energy assistance program" in the name). There are two types of documentation applicants can provide to demonstrate receipt of LIHEAP benefits. First, a LIHEAP participant might have an award letter from a state agency. The award letter will include the following: name of program, date of award, name of beneficiary and award amount. In some instances, if the beneficiary received notification of his or her approval in-person, the awardee might not have a formal award letter and will need to contact the state agency that approved the application to request a formal award letter. Second, a LIHEAP participant can provide a utility bill that reflects the Housing Assistance credit. The utility bill should clearly reflect inclusion of an Energy Assistance credit. To find contact information for a local LIHEAP agency, please visit the Low Income Home Energy Assistance Program's [state contact and agency listing](#).

National School Lunch Program's Free Lunch Program (NSLP)

Although the National School Lunch Program's Free Lunch Program (NSLP) is a federally assisted program, award letters are provided by state agencies and, thus, will vary by locality. All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary and date of award.

Supplemental Security Income (SSI)

Participation in the federal portion of SSI is an eligibility criterion for Lifeline. Some states offer state supplements to the federal SSI program, but receipt of benefits from the state supplement, but not federal SSI, does not qualify an individual for Lifeline. All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary, date of award and award amount. A benefit check stub from the Social Security Administration may also be submitted as proof of participation, if the check stub clearly states the date and name of the beneficiary.

Temporary Assistance for Needy Families (TANF)

All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary and date of award.

Medicaid

Each state provides its own unique Medicaid card to beneficiaries. However, most cards should clearly state the following: name of program, name of beneficiary, state of residence, issued or effective date and the name of the state agency that provided the card.

PROGRAM ELIGIBILITY

An applicant may be eligible for Lifeline if he or she has a household income at or below 135% of the Federal Poverty Guidelines. Below are the acceptable types of documentation:

- The prior year's state, federal, or Tribal tax return
- A current income statement from an employer or paycheck stub
- A Social Security statement of benefits
- A Veterans Administration statement of benefits
- A retirement or pension statement of benefits
- An Unemployment or Workers' Compensation statement of benefits
- A federal or Tribal notice letter of participation in General Assistance
- A divorce decree, child support award, or other official document containing income information
- If the documentation relied on does not cover a full year, such as a current pay stub, the subscriber must present the same type of documentation covering three consecutive months within the previous twelve months.

135% FEDERAL POVERTY GUIDELINES - 2016	
Members of Household	Household Income must be at or below
1	\$ 16,038
2	\$ 21,627
3	\$ 27,216
4	\$ 32,805
5	\$ 38,394
6	\$ 43,983
7	\$ 49,585
8	\$ 55,201
For every additional member of your household, add \$5,616.	

Upon examination by Tempo, any copies, photos or faxes of your documentation will be destroyed or returned to you at your request.



Lifeline Household Worksheet

Name	
Address	
Telephone Number	

Lifeline is a government program that provides a monthly discount on home or mobile telephone services. Only ONE Lifeline discount is allowed per household. Members of a household are not permitted to receive Lifeline service from multiple telephone companies.

Your **household** is everyone who lives together at your address as one economic unit (including children and people who are not related to you).

The **adults** you live with are part of your **economic unit** if they contribute to and share in the income and expenses of the household. An **adult** is any person 18 years of age or older, or an emancipated minor (a person under age 18 who is legally considered to be an adult). Household **expenses** include food, health care expenses (such as medical bills) and the cost of renting or paying a mortgage on your place of residence (a house or apartment, for example) and utilities (including water, heat and electricity). **Income** includes salary, public assistance benefits, social security payments, pensions, unemployment compensation, veteran's benefits, inheritances, alimony, child support payments, worker's compensation benefits, gifts, and lottery winnings.

Spouses and domestic partners are considered to be part of the same household. Children under the age of 18 living with their parents or guardians are considered to be part of the same household as their parents or guardians. If an adult has no income, or minimal income, and lives with someone who provides financial support to that adult, both people are considered part of the same household.

You have been asked to complete this Worksheet because someone else currently receives a Lifeline-supported service at your address. This other person may or may not be a part of your household. Answer the questions below to determine whether there is more than one household residing at your address.

1. Does your spouse or domestic partner (that is, someone you are married to or in a relationship with) already receive a Lifeline-discounted phone? (check no if you do not have a spouse or partner) ____YES ____NO
 - If you checked **YES**, you may not sign up for Lifeline because someone in your household already receives Lifeline. Only ONE Lifeline discount is allowed per household.
 - If you checked **NO**, please answer question #2.
2. Other than a spouse or partner, do other adults (people over the age of 18 or emancipated minors) live with you at your address?
 - A. A parent ____YES ____NO
 - B. An adult son or daughter ____YES ____NO
 - C. Another adult relative (such as a sibling, aunt, cousin, grandparent, grandchild, etc.) ____YES ____NO
 - D. An adult roommate ____YES ____NO
 - E. Other _____ ____YES ____NO
 - If you checked **NO** for each statement above, you do not need to answer the remaining questions. Please initial line B below, and sign and date the worksheet.
 - If you checked **YES**, please answer question #3.
3. Do you share living expenses (bills, food, etc.) and share income (either your income, the other person's income or both incomes together) with at least one of the adults listed above in question #2? ____YES ____NO
 - If you checked **NO**, then your address includes **more than one household**. Please initial lines A and B below, and sign and date the worksheet.
 - If you checked **YES**, then your address includes **only one household**. Please initial line B below, and sign and date the worksheet.

CERTIFICATION

Please initial the applicable certification(s) below and sign and date this worksheet. Submit this worksheet to Tempo along with your Lifeline application.

- A. _____ I certify that I live at an address occupied by multiple households.
- B. _____ I understand that violation of the one-per-household requirement is against the Federal Communication Commission's rules and may result in me losing my Lifeline benefits, and potentially, prosecution by the United States government.

Signature _____ Date _____